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NEGOTIATING
NORTH AMERICA
The Security
and Prosperity
Partnership

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Negotiating North America: The Security and Prosperity Partnership¹

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EXECUTIVE SUMMARY

The Security and Prosperity Partnership of North America (SPP) is a process of technical negotiations on economic and security rules and regulations conducted by working-level counterparts in the governments of the United States, Canada and Mexico. It was launched in March 2005 at a summit hosted by President George W. Bush in Waco, Texas and is now in its third year of operation. The third North American leaders' summit took place in Montebello, Quebec August 20-21, 2007. [Editor's note: The original version of this paper was written before the Montebello Summit; this version has been updated to include an analysis of the results of the Montebello leaders' meetings.] The SPP process is the vehicle for the discussion of future arrangements for economic integration to create a single market for goods and services in North America, and future arrangements for security against potential terrorist attacks on this continent.

The design of the SPP is innovative, eschewing the more traditional diplomatic and trade negotiation models in favor of talks among civil service professionals and subject matter experts within each government. This design places the negotiation fully within the authority of the executive branch in the United States to enforce and execute the law and statutes, and follows to a certain extent the nature of the subjects of the negotiation (regulatory approvals, standards, and security procedures and requirements). Three key features have contributed to the success or failure of similar U.S. negotiations: how well the design of the negotiations manages the asymmetries between the United States and smaller

negotiating partners; the role of Congress in the talks; and the role for input from special interests such as businesses, academics and NGOs. This paper assesses the SPP's innovative design on the basis of its approach to these three features.

The SPP is the successor to two previous efforts that had stalled or expired prior to 2005. First, a set of trilateral working groups established in the NAFTA to look at harmonizing standards and eliminating differences in regulation among the three governments and their agencies that, while costly for businesses and for consumers, could be reconciled without harming public health or safety. The NAFTA Working Groups had a mixed record of success, and it was hoped that the SPP would re-establish momentum for these talks. Second, the United States had largely accomplished the tasks set out in separate U.S.-Canada and U.S.-Mexico Smart Border Action Plans signed in the wake of the September 11, 2001 terrorist attacks. Officials in all three governments sought a way to renew these Action Plans with new items and to continue the progress toward greater security cooperation at, and beyond the U.S. land borders.

The design and operation of the SPP has evolved, from the initial North American leaders' summit at Waco, to a second summit held in Cancún, Quintana Roo, and continuing to the Montebello summit. This paper traces that evolution, and considers the impact of two related efforts launched by the leaders at these summits and given official sanction: the North American Competitiveness Council and the *Future of North America 2025* project.

It is premature to render a final judgment about the

SPP, but as it has been modified at past summits, this paper offers recommendations for changes that could improve the SPP and potential successor initiatives tackling the same issues.

- **The design of the SPP is creative in handling asymmetry by attempting a less political, technocratic negotiation process; however, this has raised issues of transparency and accountability that threaten the future of the SPP process. Sensitivity to asymmetry is important if the United States is to gain meaningful concessions from Canada and Mexico, but the process must be made more transparent to answer legitimate citizen concerns about potential outcomes.**
- **The design of the SPP is flawed by the exclusion of Congress from the process. Potential congressional action to ensure oversight and public accountability was predictable. The SPP must be revised or reconceived and re-launched to include Congress.**
- **The design of the SPP made it difficult to include special interest input without politicizing the negotiations. After Cancún, the inclusion of some interest groups and not others resulted in a further erosion of confidence in the SPP process. However, the input from business through the North American Competitiveness Council was constructive and beneficial; the governments must find a way to solicit input from other special interests in a similar manner. Doing so may yield similar benefits, but failing to do so will certainly jeopardize the potential gains from the SPP process.**

When President Bush, Canadian Prime Minister Stephen Harper, and Mexican President Felipe Calderón met in Montebello, they were able to laud the promising start the preceding years have given to the SPP and to announce a new cooperation plan for response to avian flu and other pandemics, a strategy for science and technology collaboration in the area of energy, and a regulatory cooperation framework that clarifies the parameters for working group negotiations. These are important achievements, but they may not satisfy special interest demands for greater transparency or critics in the U.S. Congress.

The leaders will have two more chances to make the necessary changes to sustain this dialogue on North American economic integration and trilateral security cooperation. The first opportunity will be next year, when President Bush will host the fourth summit and may take this opportunity to revisit the SPP and strengthen one of the most significant foreign policy initiatives of his second term, and the legacy of his presidency in North American affairs. The next and probably final opportunity will come in 2009, at the start of the next presidential administration in the United States. Bush's successor will either renew the SPP, or abandon it.

The close ties and growing linkages among the three North American countries will necessitate that the SPP, or a successor initiative, foster negotiation about North America and its future among the governments of the United States and its neighbors. If the leaders fail to fix the SPP, or choose to scrap it, they will soon find themselves replacing it with something similar in purpose, if not in design.

II. THE EVOLUTION OF THE SPP

Origins of the Security and Prosperity Partnership

Before 2001 economic relations and security cooperation among the United States, Canada and Mexico were negotiated on separate tracks, often bilaterally. In the thirteen years since the North American Free Trade Agreement (NAFTA) took effect, economic integration among the three NAFTA partners has deepened, slowed only by the September 11, 2001 terrorist attacks on the United States. Security concerns arising from September 11 led to renewed, U.S.-led efforts to improve border infrastructure and security particularly on the long land borders with Canada and Mexico.

Canada took the initiative on security following the September 11 attacks, proposing a 30 point action plan for improving border security and facilitating legitimate trade. The Canadian proposal was welcomed by Washington and dubbed the Smart Border Declaration and Action Plan in December 2001. The United States subsequently signed on to a similar 22 point Border Partnership Action Plan with Mexico in January 2002. Security improvements at the border, including new personnel, equipment, and physical infrastructure caused serial adjustments to private sector supply chains, but economic integration proceeded and trade among the three NAFTA partners grew along with their respective economies from 2002 to 2004.

Yet the attacks that took place on September 11, 2001 highlighted the extent of North American economic inte-

gration just seven years after NAFTA took effect and the vulnerability of integrated cross-border production to even brief disruptions in border traffic. Even more than delays, it was predictability that mattered in the management of the logistics of complicated supply chains. The September 11 attacks also forced policymakers to consider that the large volume of international trade shipments that flowed swiftly across U.S. borders could provide cover for future terrorist attacks. Weapons of mass destruction might be delivered by car, truck, or shipping container masked to look like legitimate cargo.

The Security and Prosperity Partnership (SPP) of North America is a trilateral process of negotiations among counterparts in the United States, Canada, and Mexico that was designed in acknowledgement of the interdependence of future economic gains from closer integration and collaboration in protecting civilians from terrorism in North America. Launched by President George W. Bush at the start of his second term, it represents an innovation in the way that the three countries negotiate future cooperation. The SPP combines economic and security agenda items under a single negotiation process, and involves dozens of regulators, rule makers, and officials working with their counterparts in the other countries on frequently technical matters concerning standards, testing, and measurements. Previous negotiations were led by professional trade negotiating bureaucracies or officials in security agencies.

Although the SPP process is in its third year of operation, the North American leaders' summit at Montebello, Quebec (the third in a now-annual series of such meet-

ings) provides the opportunity to assess this effort. Is the innovative SPP structure working? Can the United States, which initiated the talks and is key to their success, negotiate future North American cooperation this way?

U.S. Negotiating Challenges

The United States faces three important challenges in designing and conducting negotiations under the SPP: managing the asymmetry with smaller neighbors; managing Congress, which has a constitutional role on trade and must be persuaded to fund security measures; and the managing the pressures from special interests with a stake in the outcome of specific changes to rules or procedures. The ambitious scope of the SPP affects the interests of a wide range of economic and national security constituencies, complicating the Bush administration's work to balance competing pressures in each of these three areas.

ASYMMETRY: The United States is responsible for 88.4 percent of North American GDP, and is home to 68.6 percent of North America's population.² The average annual household income in the United States is somewhat higher than in Canada (USD\$44,000 as opposed to USD\$35,600), and substantially higher than in Mexico (USD\$10,700). As for the security of North America, the United States spends USD\$ 532.8 billion to maintain its armed forces, and the new Department of Homeland Security spent USD\$41.1 billion in 2006 alone; the expenditures for the FBI, intelligence services, and state and local sheriffs and police forces are not included in these figures.³

U.S. wealth and strength are not always decisive in negotiations with Canada and Mexico; in fact, both U.S. neighbors have well-developed diplomatic traditions of resistance to U.S. pressure. National sovereignty is routinely asserted against U.S. requests and prerogatives, and nationalist lobbies in Canada and Mexico raise an outcry whenever agreements with the United States appear to reflect U.S. priorities at the expense of national autonomy. It is possible under certain circumstances to override this sentiment, but not without costs to future cooperation. Additionally, when the United States presses its advantages in bilateral or trilateral negotia-

tions, it often gets minimal, "satisficing" concessions from Ottawa and Mexico City rather than creative offers of assistance that advance shared goals.

This dynamic, although frustrating to some in Washington, has been a persistent feature of U.S. relations with its neighbors. Yet the United States can often overcome the defensive instincts of its neighbors by structuring negotiations in such a way that the U.S. advantages are minimized, treating negotiators for Canada and Mexico as equals and partners and avoiding any explicit resort to its advantages of size. In practice, such advantages are never far from the minds of our negotiating partners, and so can often go unspoken.

The postwar growth of regimes and institutions like the NAFTA and the World Trade Organization has been fueled by the desire of relatively weaker countries to curb the ability of stronger ones to resolve economic disputes by capitalizing on asymmetrical advantages. Following Kenneth Oye, we can suggest three views on cooperative behavior in North America, some of which we have seen employed by U.S. negotiators in the past.⁴

First, what are the "payoffs" or incentives for cooperation? These "payoffs" are not always static, and can sometimes be altered by the players involved. The United States has tried to overcome the defensive instincts of its neighbors by structuring negotiations in such a way that the U.S. advantages are minimized, treating negotiators for Canada and Mexico as equals and partners and avoiding any explicit resort to its advantages of size. The Bush administration chose to make the SPP a negotiation process among technical specialists and agency regulators hoping that the technical nature of the issues under discussion would promote science, or efficiency based compromises based on the merits of proposals rather than on which of the countries made a particular proposal.

Second, one of the most significant incentives for cooperation rests in extending the so-called "shadow of the future." Incentives for cooperation rise in the presence of expectations about benefits from future cooperation. In other words, is cooperation likely to be a one-off exercise in which players must get as much as they can, or is there some expectation that there will be future opportunities for mutually beneficial cooperation? As an open-ended negotiation process, rather than a negotiation intended to produce a specific treaty or executive agreement, the SPP offers Canada, Mexico and the United States continuous incentives to cooperate on present

issues to earn consideration on future matters that may be more important to each.

Finally, the incentives to cooperate tend to decline as the rise in the number of players to a negotiation increases incentives for defection or free riding on the process. While there are only three governments formally involved in the SPP negotiation process, the complexity of the negotiating agenda necessitates that each government coordinate a hydra-headed inter-agency team that involves multiple cabinet-level secretaries or ministers, each with institutional interests to protect. Additionally, the variable geometry of federalism in each of the three countries means that constitutionally, state or provincial governments may have jurisdiction over items on the ostensibly trilateral SPP agenda. Without strong leadership, tactical alliances among relatively weaker players across national lines have the potential to block consensus or compromise. Asymmetry is a factor affecting the SPP at several levels at once.

CONGRESS: Trade and the domestic economy of the United States are under the constitutional authority of the Congress (Article I, Section 8) and this power is guarded by congressional leaders against executive branch encroachments—regardless of the partisan affiliations of respective office-holders in the two branches. The president and the executive branch have constitutional authority for law enforcement and national security (Article II, Section 2), but funding domestic and border security requires congressional appropriations, and falls under congressional oversight scrutiny. The checks and balances of the U.S. system, and the competition for power among branches of government (and within the executive and legislative branches as well) are a major consideration for presidents hoping to negotiate economic and security agreements with allies.

In the context of North America, and of deepening continental integration, the management of Congressional relations presents significant challenges for U.S. negotiators both because of, and beyond those just described. The bitterness of contemporary U.S. trade politics virtually ensures no trade agreement is ratified by Congress without skeptical scrutiny and acrimony, regardless of its economic significance.⁵ Yet, economic, and now security, relations with Canada and Mexico have a particular salience with many Americans simply because the impact is so direct. A trade agreement with Singapore,

or a security arrangement in the port of Rotterdam, will have a negligible effect on the lives of American voters. When voters are unperturbed, Congress is often quiescent as well, preferring to align itself with significant public concerns when challenging the executive. Relations with Canada and Mexico affect Americans directly. Thirty-seven U.S. states count Canada as its largest foreign trade partner, and 22 states count Mexico as number one or number two. Nearly 40% percent of Americans live in states with a physical border with either Canada or Mexico.⁶ As many as 12 million Mexicans reside in the United States illegally, joining some 26.8 million Americans of Mexican ancestry. Significant numbers of American voters know one or more Canadians personally, and more than 14 million Americans visited Canada and more than 20 million visited Mexico for vacations in 2005 alone.⁷

These linkages have grown and deepened as a result of continental economic integration, which has multiplied the number of contacts and transactions among citizens of the three countries dramatically. As this contact has grown, so have the number of Americans with direct experience with the rules and security procedures that affect U.S. trade with NAFTA partners, including rules affecting travelers for business or tourism or visiting family on the other side of the border. Famously impatient with bureaucracy, they can and do complain when they are impeded or insulted by rules that they find unjustified. Many a customs officer since 1994 has heard the complaint, “I thought we were supposed to have free trade with Canada/Mexico!” Additionally, the small and medium-sized enterprises (SMEs) that have dramatically increased their contribution to bilateral trade with Canada and Mexico since NAFTA remain SMEs, and typically express frustration with paperwork and regulations that large firms accept with greater alacrity. In the age of email, a negative experience can translate into appeals to Members of Congress as well as administration officials within minutes.

As important as Canada and Mexico are as U.S. trading partners, the special scrutiny faced by an administration when it negotiates on anything with these governments is a constraint that can lead presidents to defer action, and to approach concessions with great anxiety that can seem at odds with the balance of power that exists between Washington, Ottawa and Mexico City—in fact, this balance is matched by an equally delicate balancing act within the U.S. political and constitutional sys-

tems that must be managed with care by U.S. negotiators.

SPECIAL INTERESTS: The role of special interests—those that organize to have an influence of governmental decision-making—is a regular topic of criticism by academics, U.S. politicians, citizens, and foreign governments negotiating with the United States. The firms that conduct the trade, provide the services, and make the investments that cross North American borders are held to be the best financed and organized in Washington, and yet they represent a diverse constituency that often clash with one another. Unity among business interests is not automatic, or even naturally-occurring, despite being generally necessary (although often not sufficient on its own) to achieving decisive influence over policymakers.

Often, citizen groups and other non-governmental organizations (NGOs) are more effective in marshalling support or resistance in response to proposed international agreements, or to rumored provisions of such agreements. The orientation of U.S. NGOs is often said to be consistently leftist or progressive, a configuration that many observers have argued is in response to the presumed rightist or conservative orientation of the business community. Yet as was seen in the debate over immigration legislation in 2006 and 2007, many influential NGOs are conservative today. Like firms, NGOs struggle to achieve unity in offsetting coalitions that react to more often than lead U.S. policymakers. The notion that NGOs and firms aggregate citizen interests and array themselves in a balance of power that is more or less stable is increasingly implausible, if it ever was a convincing supposition.

This makes the role of special interests in U.S. negotiations a significant challenge. Beginning with the Canada-U.S. Free Trade Agreement negotiations in the 1980s, U.S. negotiators sought input on draft language and technical issues from special interests while negotiations were underway in more or less formal structures established to facilitate discreet consultations. The input of the firms was valued by negotiators for two reasons. First, the increasingly complex supply chains in the private sector made it difficult to assess the likely consequences of certain provisions on U.S. interests without the understanding that only these firms had of their own production and distribution networks. Second, the strong support of the business community was vital to securing ratification of a treaty or passage of implementing legislation; the executive branch could make executive agreements only, and

these were of limited utility. The Advisory Committee for Trade Policy and Negotiations (ACTPN) established by the Trade Act of 1974, and the 16 Industry Trade Advisory Committees that have evolved since have become key sources of input to the U.S. trade policy process. However, the process is uneven in that both small and large firms may devote resources to participation in such groups, but large firms also have the wherewithal to engage in independent pressure activities while SME's must rely more heavily on industry associations to represent their interests.

NGOs, particularly labor unions and environmental groups have been invited to participate in trade negotiations as well, but among NGOs critical of globalization or security measures adopted to combat terrorism there is a rejectionist faction that will not participate constructively (or at all) despite invitations by negotiators to attend briefings or provide input. Instead, they prefer to withhold judgment until a final negotiated text is submitted to Congress for ratification or the passage of any necessary implementing legislation.

U.S. negotiators face the challenge of carefully structuring negotiations with foreign partners so that special interests will aid them in concluding a good agreement, or at least not seek to block what is negotiated. In North America, they must also contend with firms that are transnational and NGOs with cross-border ties that can blur the lines between U.S. special interests, and special interests that are as Canadian or Mexican as they may be American; that is, integrated North American special interests that can nonetheless operate as U.S. interests in Washington.

Linking Extant Economic and Security Agendas

President Bush convened the first North American leaders' summit to launch the SPP in Waco, Texas March 23, 2005. Although an initiative to better manage North American relations was not discussed during the 2004 presidential election campaign, border security and economic growth had been hotly debated by the candidates. In Canada, Prime Minister Paul Martin was newly elected himself and had pledged to

improve relations with the United States. In Mexico, President Vicente Fox had a limited amount of time to press the United States on immigration issues before the end of his term in 2006. The political conditions across North America were favorable for a successful summit.

At the same time, the SPP channeled more than the goodwill and political agendas of the three North American leaders in early 2005. The SPP was also fed by unresolved issues that had been building up in separate economic and security discussions among the three countries. The state of North American cooperation on facilitating trade and fighting terrorism prior to the Waco Summit was healthy, but in late 2004 a growing number of officials in all three countries felt that a new negotiating process such as the SPP was needed to address issues of emerging concern.

THE POST-NAFTA ECONOMIC AGENDA: The United States led its major trading partners in successive rounds of tariff reductions in the years following the Second World War in order to undo the damage that high tariffs had caused to the global economy during the Great Depression and promote the recovery of war-torn economies through exports made possible by general trade liberalization. The General Agreement on Tariffs and Trade (GATT) provided a venue for successive rounds of global trade talks. Following the conclusion of the Tokyo Round of GATT negotiations in 1979, tariff levels among the major economies had been significantly reduced. However, Robert Pastor noted at that time that the success of the Tokyo Round in overcoming tariff barriers also revealed some of the difficulties that lay ahead for the multilateral trading regime in the form of non-tariff barriers to trade. Pastor argued, “Lowering tariffs has, in effect, been like draining a swamp. The lower water level has revealed all the snags and stumps of non-tariff barriers that have to be cleared away.”⁸

NAFTA was a pioneering trade agreement in many respects, reflecting Pastor’s view that future negotiations would have to go beyond tariff reductions to effectively liberalize trade. Building on progress made by negotiators of the earlier Canada-United States Free Trade Agreement (CUFTA), NAFTA negotiators tackled an array of economic issues such as investment, services, environmental regulation, and labor issues (the later two in side agreements negotiated by the Clinton administration) that suggested that the governments were willing to

cooperate or coordinate in regulating broad sectors of their economies to facilitate economic integration.

NAFTA negotiators also put into place dispute settlement mechanisms to litigate disputes over the application of NAFTA provisions (especially Chapters 11, 19, and 20), and established a process for future negotiations to eliminate “snags and stumps” by creating more than 30 trilateral NAFTA Working Groups and committees composed of representatives from each of the federal governments with relevant policy responsibility.⁹ Annual meetings of the trade ministers for each of the three countries, dubbed the NAFTA Free Trade Commission (and sometimes simply the NAFTA Commission) were established to monitor the progress of the NAFTA Working Groups and to address North American trade issues and irritants as they arose. The NAFTA Working Groups were intended to take up the complex task of identifying differences in regulatory requirements and standards that were barriers to the formation of a single North American market for particular goods and services. Some of these differences might be sorted out by the responsible regulators and rule makers working with their counterparts. Those differences that could only be resolved through additional negotiation would be referred to the trade negotiating units of the three governments as items for future talks.

As the NAFTA was implemented, the performance of the NAFTA Working Groups and committees varied. Some became standing forums for dialogue and discussion working steadily on outstanding issues; others completed an initial agenda and ceased meetings; while a few simply never met or were unable to advance toward any resolution of differences and stopped trying.

Although NAFTA had included a mandate for these follow-on negotiations on regulations and standards, this was itself something less than the sort of political support that most career officials would expect before engaging in talks with foreign counterparts that might lead them to make concessions on a rule or regulation that was established consistent with their agency or department’s statutory authority and might even involve questions of national sovereignty. Politically, it was significant that the NAFTA negotiators had worked for U.S. President George H.W. Bush, Canadian Prime Minister Brian Mulroney, and Mexican President Carlos Salinas. By 2000, different men and different parties controlled the executive branches of each of the three

governments, and the political support for NAFTA's follow-on agenda seemed to many officials to have expired.

THE POST-9/11/01 SECURITY AGENDA: Debates about immigration and border security, like the threat of terrorism, did not begin with September 11, 2001. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which included a provision that required the U.S. Immigration and Naturalization Service to keep a record of all individuals entering and exiting the United States. The purpose of this provision, known as Section 110 for its place in the INS code, was to make it possible to assess patterns in legal and illegal migration, as well as to establish that individuals deported from the United States had actually left the country. The Canadian government strongly opposed this requirement, fearing that it would cause delays that would affect commercial traffic at major border crossings and thereby hurt the Canadian economy. The Mexican government also opposed Section 110 implementation, but was less vocal in protesting it in Washington; Mexico was concerned with the implications of most of the provisions of the 1996 immigration reform legislation.

NAFTA seemed to presage an era of open access for Canadians to the United States, and so the 1996 immigration legislation came as a surprise to Canadians, 90 percent of whom live within 150 miles of the U.S. border and cross frequently each year for business and pleasure. The government of Prime Minister Jean Chrétien reacted to this unexpected challenge by encouraging a series of domestic and bilateral discussions on border management and security between 1996 and 2000, including: the Shared Border Accord, the Border Vision Initiative, the Cross-Border Crime Forum, the Canada-U.S. Anti-Smuggling Working Group, and the Canada-U.S. Partnership which held two meetings between federal officials in both countries and local stakeholders in 2000.

This flurry of border meetings and discussions in Canada, and between officials and border region residents in Canada and the United States provided the Canadian government with numerous concrete ideas for improving border security. In the aftermath of the September 11 attacks, Canada's Deputy Prime Minister John Manley, who was also the prime minister's special border policy coordinator in cabinet, compiled the best of these and

proposed to the United States in December 2001 that the two countries work their way through the list. The Bush administration happily agreed, and the result was the U.S.-Canada Smart Border Declaration (setting out principles and a shared vision of an efficient and secure border) and Action Plan (the list of action items to be addressed by both governments, separately or jointly).

The U.S.-Canada Smart Border Action Plan had 30 points, grouped into four categories.¹⁰ Under the heading, "The Secure Flow of People" the governments agreed to work toward common biometric identifiers for identity documents, more secure permanent resident documents, a single alternative inspection system building on a pre-existing joint program for frequent border crossers such as commuters called NEXUS that was then in the pilot phase, better screening of refugee and asylum applicants for ties to terror groups, an agreement to deport rejected asylum and refugee applicants to a safe third country rather than to each other's territory, and a joint review of visa waiver country lists and a sharing of watch lists among U.S. and Canadian visa issuance offices. In addition, "the Secure Flow of People" section of the U.S.-Canada Smart Border Action Plan committed the governments to continue to implement the pre-clearance of U.S. bound air passengers at major Canadian airports, sharing of air passenger information including passenger name records for flights between the two countries and a joint effort to share information to improve the screening of international air passengers arriving in either country with binational passenger analysis teams positioned at major international airports in the two countries. The governments agreed to an urgent review of procedures for passenger screening at ferry terminals, recalling the use of a ferry crossing from Canada to the United States by Millennium bomb plotter Ahmed Ressam in December 1999. Canada and the United States also agreed to jointly-develop compatible immigration databases, increase the number of immigration officers each country posted overseas and enhance the joint training of airline personnel in what documents to look for when dealing with suspicious passengers.

The Action Plan of the U.S.-Canada Smart Border agreement also included a section on "the Secure Flow of Goods" that committed the governments to develop audit-based partnerships with private sector firms to improve security and to harmonize commercial inspection procedures, to build joint border inspection facilities

in remote areas, improve data exchange between customs agencies and develop joint inspection procedures for maritime shipping containers. A section of the Action Plan on "Secure Infrastructure" engaged counterpart agencies in each country to coordinate physical and technological improvements to border points and along trade corridors to better manage traffic flow and inspections, and to explore the use of transponder technologies and electronic container seals to add information and security to goods in transit. Additionally, the governments planned to study and to develop emergency response plans to better protect critical infrastructure, and to press the U.S. Federal Aviation Administration and Transport Canada to expedite completion of an agreement already being negotiated on the compatibility and equivalence of security and training standards for pilots, airline and airport personnel.

The U.S.-Canada Smart Border Action Plan recognized a central obstacle to jointly improving security in the final section, "Coordination and Information Sharing in the Enforcement of these Objectives." This section exhorted law enforcement agencies to expand the use of binational, interagency, federal-state/provincial and even local Integrated Border Enforcement Teams, and Integrated Maritime Enforcement Teams (IBETs/IMETs) and to coordinate enforcement whenever the evidence trail crossed the shared border. New joint teams would review and share intelligence information, and the United States would sign a memorandum of understanding to permit Canadian law enforcement to have real time access to the FBI fingerprint database. Lawyers on both sides were committed to resolve issues related to the joint removal of deportees, and developing counter-terrorism legislation to provide necessary authority to law enforcement without violating Canadian or U.S. constitutional protections for personal liberty or privacy. The U.S. Treasury Department and Canada's Ministry of Finance were committed to exchange information and coordinate in the freezing of terrorist assets. More broadly, the Action Plan exhorted agencies and departments to engage in joint training and exercises both to improve readiness and effectiveness, and to boost citizen confidence that the United States and Canada were cooperating fully against terrorist groups in North America.

In early 2002, White House officials took the U.S.-Canada Smart Border Action Plan to Mexico and sug-

gested to the government of President Vicente Fox that both countries work to develop a similar agenda for joint security improvements. The U.S.-Mexico Border Partnership Action Plan was announced in March 2002, and included 22 points grouped in three sections: Secure Infrastructure, Secure Flow of People, and Secure Flow of Goods.¹¹ In the infrastructure section Mexico and the United States began by committing to joint long term planning and to the development of a list of priority bottlenecks in the current border inspection system for immediate attention and relief. The two governments agreed to work together to conduct vulnerability assessments for critical infrastructure and work together to upgrade protective measures. At border points of entry, Mexico and the United States would synchronize hours of operation, make coordinated infrastructural improvements, and consider ways to improve traffic flow and eliminate backups on both sides of the border, using demonstration projects to observe how changes might affect other aspects of border security. The two federal governments would also take the lead in re-establishing and reinforcing bilateral coordination among state and local authorities surrounding border posts. Mexico also obtained a commitment from the United States to work to develop joint financing mechanisms to fund border infrastructure improvements.

The U.S. Mexico Action Plan followed the U.S.-Canada model more closely in its action steps related to the movement of people. Mexico and the United States planned to work together on traveler preclearance, and the use of a frequent traveler system called SENTRI that was similar to the NEXUS system that the United States and Canada used for their border. Information on airline passengers would be shared in advance by the two countries under the Action Plan, and the governments set a goal to facilitate NAFTA business travelers with dedicated lanes at major airports. Mexico and the United States pledged to improve cooperation under pre-existing agreements to combat alien smuggling, and to coordinate better efforts to screen third-country nationals. The two governments pledged to consult on visa policies and to conduct joint training for immigration and customs officials to better detect criminal activity. The Action Plan signed by the United States and Mexico emphasized the need for public and private sector collaboration to be improved in order to improve security along the shared border, particularly to secure railways and develop ways

to secure shipments in transit. The governments set in motion efforts to share inspection and monitoring technology, such as license plate readers and electronic truck and container seals. Law enforcement agencies in each country were tasked with expanding their cooperation in combating customs fraud and seizing contraband goods and counterfeit products.

The concrete nature of the commitments made by the governments in the two Action Plans, and the attention paid to progress reports and benchmarks by President Bush, President Fox, and Prime Minister Chrétien (and his successor Paul Martin) helped to make the Smart Border responses to the September 11 attacks both constructive and successful. However, as items on the action plans agreed to respectively by the United States and Canada and by the United States and Mexico were accomplished, the lack of a mechanism for renewing the Action Plans by adding or refining items was a growing concern for the governments. The Action Plan items had been chosen in part due to the general consensus among border stakeholders of the necessity of changes at the border, most of which were seen as worthwhile *before* September 11, 2001. Next steps moving beyond the consensus items in the original Action Plans was certain to be more difficult because the issues that remained were intrinsically more difficult and there was less general agreement among the three countries about how to proceed.

The need for new talks on security measures and for reviving stalled discussions on standards and rules that were preventing the emergence of a single North American market for many products and services presented an opportunity for linking discussions in a broad trilateral negotiation process. Yet few observers anticipated that the emergence of new negotiations on North America would be one of the first major international initiatives of President Bush's second term.

The SPP at the Waco Summit (2005)

In early 2001, some observers saw encouraging signs that North America, and particularly Mexico, would rank high on the U.S. agenda. As governor of Texas, George W. Bush had taken particular interest in improving relations with Mexico, and particularly with neigh-

boring Mexican states. Governor Bush's stewardship of Texas' relations with Mexico was touted by his presidential campaign as valuable foreign policy experience. Shortly after inauguration in January 2001, Bush's first foreign trip as president was to Los Pinos, the residence of Mexican President Vicente Fox. Just days before September 11, 2001, Fox had been in Washington talking about regularizing migration across the U.S.-Mexico border through some form of guest-worker program. While presidents Bush and Fox got along personally, Fox's proposals for a more open U.S.-Mexico border regime did not survive September 11, and Mexico never received the same level of U.S. attention afterward.¹²

Meanwhile, Canadians were debating what many perceived to be a significant weakening of "the special relationship" that had sustained Canada-U.S. relations for much of the postwar period. It was feared that the not-so-subtle support of Vice President Al Gore's candidacy by then-Prime Minister Jean Chrétien, particularly in a speech Chrétien gave at Duke University during the Florida recounts, might lead the Bush administration to downgrade Canada-U.S. relations.

September 11 was a watershed for the U.S. relationship with Canada as well. Canadians themselves had demonstrated their generosity by opening their homes to thousands of air travelers stranded by the closure of American airspace after the attacks. For many Canadians, Bush's failure to single out Canada for praise in a speech to a joint session of Congress on September 20, 2001 was a sign that the bilateral relationship remained in poor shape, and might soon get worse. Then, in Bush's 2002 State of the Union Address he referred to Tony Blair's Britain as America's greatest friend—a title many Canadians had proudly claimed.

Complicating matters even further, U.S. political and foreign policy attention throughout 2002 and 2003 were dominated by the repercussions of military action against the Taliban in Afghanistan and Saddam Hussein's regime in Iraq. The Chrétien government gave support to the Afghanistan mission, and Canada eventually sent troops there. Its position on Iraq was more complex, courting U.S. attention while considering its position, and ultimately upbraiding the Bush administration for taking military action to enforce United Nations Security Council disarmament resolutions. Mexico, citing a long tradition of non-intervention in foreign affairs, signaled it would not participate militarily in

either theater of the war, but chose not to offer any public rebuke to Washington as it acted in either country. The extent to which the positions taken by Ottawa and Mexico City with regard to war in Afghanistan and Iraq affected their bilateral relations with the United States remains unclear, but the Bush administration's focus on terrorism initially confirmed Canadian and Mexican fears of marginalization in U.S. foreign policy.

As a result, when all three leaders, President Bush, President Fox, and the newly installed Prime Minister Martin, finally met at Waco, Texas on March 23, 2005, the summit was seen in all three countries as an exercise in mending a few fences. Yet both the summit and the announcement of SPP represented more than an exercise in regional diplomacy and good neighborliness.

The Waco Summit took place at a time when all three leaders were confronted at home by the increasingly poisonous politics of regional and global trade liberalization. NAFTA implementation and the successful Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT) had revitalized domestic movements against trade liberalization and free markets in North America and around the world, culminating in running street battles between protesters and police in Seattle in 1999.¹³ The Bush administration regained some of that momentum in November 2001 rallying strong support for the launch of the Doha Round of World Trade Organization negotiations, and then won congressional approval of fast-track negotiating authority (now called trade promotion authority) to carry these talks forward in early 2002.

As it prepared for the Waco Summit, the Bush administration was also struggling to win congressional support for the recently concluded U.S.-Central American Free Trade Agreement (CAFTA). The CAFTA was a relatively minor agreement for the United States in economic terms, but important politically in shoring up important allies in the region. Yet, U.S. agricultural interests, especially sugar beet growers, were adamantly opposed to the CAFTA. Complicating matters further was the simple fact that the CAFTA rhymed with NAFTA and too readily recalled the bitterness of the debate a decade earlier.¹⁴

Whereas the steady, successful, and largely uncontroversial implementation of the Smart Border Action Plans established support among officials in all three

SPP WORKING GROUPS

Prosperity Agenda

E-Commerce

Energy

Environment

Financial Services

Food and Agriculture

Health

Manufactured Goods and Sectoral and Regional Competitiveness

Movement of Goods

Transportation

Business Facilitation

Security Agenda

Aviation Security

Bio-protection

Border Facilitation

Cargo Security

Intelligence Cooperation

Law Enforcement Cooperation

Maritime Security and Transport

Critical Infrastructure Protection

Science and Technology Cooperation

Traveler Security

governments for further cooperation in the area of security, anecdotal evidence of difficulty crossing U.S. borders and unpleasant encounters with new security measures led the public to be more apprehensive in Canada and Mexico about negotiating new security measures with the United States. The vigorous debate over the state of U.S. civil liberties during the 2004 U.S. election contributed to alarm in both Canada and Mexico over post-September 11 security legislation like the USA-PATRIOT Act and the conditions at the military prison at Guantanamo Bay, Cuba.

As a result, U.S. objectives for the SPP included a reinvigoration of talks aimed at removing non-tariff barriers to economic activity and renewing the Smart Border Action Plans to further security cooperation, all while trying to immunize the SPP from the bruising debates over trade liberalization and the USA-PATRIOT Act.

The SPP was structured in recognition of the reality that technical negotiations required that line regulators, rule makers, and specialists take the lead in working with counterparts. And yet, it was also reflective of the fact that the soft political mandate for such negotiations (on the economic side) contained in NAFTA (the built-in agenda) had been insufficient. These considerations led President Bush to name Commerce Secretary Carlos Gutierrez and Homeland Security Secretary Michael Chertoff as the co-chairs of the U.S. SPP process. U.S. Secretary of State Condoleezza Rice served as a third co-chair, with the detachment from institutional prerogatives for prosperity issues (which the Department of Commerce had) or security issues (which the Department of Homeland Security would logically have) to provide the president with advice on the overall health of the initiative. Rice's coordinating and advisory function was later supplemented when the National Security Council appointed an SPP Coordinator from its ranks in order to track activity across the many departments and agencies involved in SPP related talks with Canadian and Mexican counterparts.

The Canadian and Mexican governments similarly created cabinet teams to oversee the SPP, choosing the approximate counterparts to the U.S. officials named by Bush. Periodic SPP Ministerial meetings involving the cabinet-level SPP participants scheduled meetings in between the meetings of the heads of government in order to assess progress and identify sticking points. The ministerial meetings helped to set the agenda for the

leaders' meetings which were held annually, with the host country rotating.

After setting up a structure for the SPP at Waco, the leaders charged the responsible cabinet officials to identify potential economic and security irritants and report back to the leaders in three months time so that the three countries could subsequently convene working groups that would be co-chaired by representatives from each of the three countries at the assistant secretary or equivalent level.

The Report to Leaders¹⁵ issued in June 2005 identified more than 300 separate irritants as priorities for one or more of the three governments. These 300 items were assigned to a slightly more manageable set of 20 working groups; 10 Prosperity and 10 Security.

The SPP Report to Leaders then divided the items on the SPP agenda into three basic categories: (1) "early harvest" items, often referred to as "low-hanging fruit"; (2) nearer term "big impact" initiatives that would take more time but yield a bigger benefit; and (3) longer-term ideas and initiatives left on the table for discussion at a future date. The three categories each corresponded with target completion dates at the request of the leaders, who insisted that the SPP was to be an action-oriented initiative rather than a debating society.

In the three-month period between Waco and the SPP Report to Leaders, numerous "early harvest" objectives had already been achieved. Included among them were progress on work toward modernizing the NAFTA's temporary entry provisions for professionals, the creation of a harmonized approach to the mad-cow outbreak in North America, improvements to aviation safety and air navigation systems, and work toward liberalizing the NAFTA's rules of origin. On security matters, progress had been made on infrastructure concerns ranging from the Windsor-Detroit border crossing to Nogales, Arizona, to the identification of new sites for test programs like NEXUS Marine and work toward adopting a common trilateral position on standards in the World Customs Organization. While the "early harvest" items were not unimportant, they were not uniformly a product of the new impetus given by the SPP, but reaped what had been sown in previous bilateral and trilateral discussions, processes and initiatives.

Progress on the "big impact" and longer-term objectives

was a more significant task, especially within the deadlines ranging from as little as 6 months to several years set in the SPP Report to the Leaders. Anticipating this, the cabinet-level group organized these priorities into six baskets, three on the prosperity side and three on the security side. The importance of the “big impact” or longer term objectives to the fate of the SPP was recognized by referring to these items as signature initiatives (see box, at right).

The structure of the SPP reveals it to be something less than a treaty or formal agreement, and far less an institution for North American governance. Instead, the SPP combines an agenda with a political commitment to address the issues within it. The agenda is not novel or original; in many ways, the SPP represents old wine in new bottles since most of the issues within it are leftovers or orphans from other processes, among them the NAFTA’s built-in agenda.

For example, in June 2006, the Department of Commerce touted revisions to the NAFTA’s rules of origin for goods to qualify for duty free treatment as an important accomplishment of the SPP.¹⁶ Yet, work on rules of origin under the NAFTA has been part of the built-in agenda of the NAFTA Working Groups since the agreement came into force in 1994 and the 2006 announcement actually represented the third such liberalization exercise under that built-in agenda.

Similarly, the North American Energy Working Group (NAEWG), now part of the SPP, was actually established on an *ad hoc* basis in the spring of 2001. The members of the NAFTA Working Group on Energy simply began meeting as the SPP Prosperity Working Group on Energy, filing similar reports to the responsible coordinators of each process. It is interesting to note that the SPP working groups did not supplant or replace the NAFTA working groups addressing similar or identical issues. The NAFTA working groups that remained active and productive in 2005 operated on a parallel track, and coordination with the SPP process, when it occurred, was the result of working group members taking the initiative to link these discussions and in some cases to redefine agendas to avoid overlap or conflict.

The SPP Security agenda is somewhat different, most notably in that it incorporates all the initiatives under the two Smart Border Action Plans signed in December 2001 (Canada-U.S.) and the March 2002 (U.S.-Mexico).¹⁷ The previous groups have been fully replaced by SPP working groups.

SPP SIGNATURE INITIATIVES

Prosperity

I. MAKING NORTH AMERICA THE BEST PLACE TO DO BUSINESS

- Enhancing and Streamlining Regulatory Process in North America
- Fake Free North America
- Expanding Duty Free Treatment by Liberalizing Rules of Origin

II. SECTORAL COLLABORATION TO ENHANCE NORTH AMERICAN COMPETITIVENESS

- Steel: A Strategic Partnership—A Strategic Industry
- Moving Towards a Fully Integrated Auto Sector
- Creating a Sustainable Energy Economy for North America
- Air Transportation: Expanding Our Horizons
- Safer, Faster and More Efficient Border Crossings
- Free and Secure Electronic Commerce
- Enabling Our People

III. MAKING NORTH AMERICA THE BEST PLACE TO LIVE

- Clean Air, Clean Water: Protecting People and Our Environment
- Access to a Safe and Reliable Food Supply
- Healthier North America

Security

I. SECURING NORTH AMERICA FROM EXTERNAL THREATS

- Biometrics and Secure Documentation Vision
- Real-Time Information Sharing
- Compatible Screening Standards
- Export Controls for Radioactive Sources
- Bio-protection

II. PREVENTING AND RESPONDING TO THREATS WITHIN NORTH AMERICA

III. FURTHER STREAMLINING THE SECURE MOVEMENT OF LOW-RISK TRAFFIC ACROSS OUR SHARED BORDERS

The fact that the SPP is made up of initiatives left incomplete from other processes can be interpreted in two different ways. On one hand, the political commitment by all three leaders to dealing with the orphans under the auspices of the SPP suggested that renewed momentum would push them to completion. On the other hand, the SPP could also be seen as repackaging problematic initiatives, none of which had much prospect of success inside or outside the SPP.

Perhaps the most important feature of the SPP design is that it is neither intended to produce a treaty nor an executive agreement like the NAFTA that would require congressional ratification or the passage of implementing legislation in the United States. The SPP was designed to function within existing administrative and legislative authority already residing with the executive branch. Rules and standards could be set, law enforcement and national security prerogatives pursued, all within the broad parameters of constitutional authority or prior congressional authorization. Furthermore, as the U.S. legislative process has become increasingly dominated by fiscal constraints over the past several decades, and with it the influence of annual budget and appropriations processes, many executive branch actions taken under existing legislative authority are often subject to yet another round of congressional scrutiny. At first blush, the SPP appears to be a substantively new initiative that circumvents congressional oversight and authority. Yet, because the SPP is designed to foster trilateral cooperation within existing legislative authority, the Bush administration with some justification can argue that the SPP is an initiative to implement existing law.

On the prosperity agenda, including both NAFTA and other U.S. economic policies and given a context of deepening economic integration among North American countries, greater cooperation with counterparts in these countries is reasonable in order for the U.S. executive branch to accomplish things that might, a century ago have been realizable within the domestic sphere. The security agenda of the SPP is similarly a response to the changing nature of international trade with highly-integrated production moving rapidly across borders on a just-in-time basis, and individuals now capable of transferring funds and traveling from one part of the world to another rapidly. Without close cooperation with neighboring law enforcement and regulatory entities, how could the executive branch protect U.S. citizens from

future terrorist attacks at home? What was new when the SPP was launched at Waco in 2005 was a structure that demonstrated, with annual leaders' summits and the engagement of high-profile cabinet officials in the process, the political mandate and support for these left-over, orphaned negotiations that had been unable to make progress in previous forms and forums. The Bush administration expected legislative oversight by Congress of the bits and pieces of the SPP agenda to take place via oversight procedures already in place as a result of legislation governing agency actions on those particular areas of policy.

With presidential and cabinet-level political support, the dozens of objectives outlined under each of the 20 SPP working groups would proceed on the basis of trilateral consultation at the staff-level within respective government agencies already responsible for those policy areas. Shifting the substantive work of the SPP to the staff level, much as the NAFTA working groups had done, would ostensibly de-politicize the policy work being done by leaving it in the hands of technical experts. Technocratic negotiations would reduce the power-politics dimension of the talks, since the size of a country's GDP is hardly relevant to the question of the appropriate crash test standard for a sport utility vehicle.

Perhaps most interestingly, this aspect of the SPP explains why in the United States there is no centralized bureaucratic direction or control of SPP activities. In the run up to the Waco Summit, coordination of the SPP agenda was focused on the National Security Council (NSC). While the NSC continues to be the only U.S. government entity with a bird's-eye view of the SPP, especially as trilateral summits approach, the day-to-day responsibility for implementing the SPP's linked agenda's was handed to the Department of Commerce (Prosperity) and the Department of Homeland Security (Security), each of which is already legislatively responsible for policy areas covered by the SPP. Also interesting is that the United States Trade Representative (USTR), normally responsible for negotiating U.S. trade agreements, did not become the lead agency for the Prosperity agenda. This was perhaps less the product of a bureaucratic turf battle within the U.S. government than it was again a reflection of the structure and content of the SPP. The Office of the United States Trade Representative is responsible for negotiating both new trade agreements and the resolution of disputes arising from them. The

SPP does not venture into either of these areas. It is neither a new agreement, nor a forum for addressing disputes among the three countries.

After the June 2005 SPP Report to Leaders finalized the initial structure and set the negotiations in motion, the challenging work of producing results in time for the second annual meeting of the leaders, to be hosted by Mexico in 2006, was still ahead. Skeptics close to the process inside and outside government raised questions about how much of the SPP agenda could actually be implemented. Like the NAFTA working groups that preceded them, each of the working groups under both SPP agendas was bound to encounter important legislative limitations on action. Without an over-arching piece of legislation from Congress to both fund and sanction SPP proposals, U.S. staff-level experts would be restricted to the administrative latitude given them under existing pieces of legislation.

Further, while shifting responsibility for agenda items to the staff-level could potentially de-politicize work on small issues, it also effectively removed it from the kind of public accountability normally associated with U.S. trade negotiations. As word emerged about the issues under discussion by the SPP working groups, special interests tried to monitor progress, and found that many SPP activities were nontransparent. This could be partially explained by the technical nature of the new marriage of economics and security. However, the low-politics of dealing with the tyranny of small differences in North America soon began attracting skepticism from some of the same anti-trade critics that had poisoned U.S. trade policy since the debate over NAFTA in 1994.

The SPP at the Cancún Summit (2006)

Twelve months between leaders' summits, and just nine months since the SPP Report to the Leaders established a structure and finalized an action agenda for moving forward, was not a lot of time to make progress on even a modest set of agenda items, to say nothing of the dozens of initiatives being worked on by SPP working groups. The political support provided by the engagement of the leaders and of the cabinet-level ministerial group was called into question as all

three leaders entered critical periods in domestic politics. In the United States, pivotal mid-term elections loomed in November. In Mexico, national elections set for July 2 meant that the summit President Fox planned to host in Cancún, Quintana Roo (in solidarity with a city recovering from Hurricane Wilma) would be Fox's last trilateral meeting as Mexico's president. However, the most important political change preceding the Cancún summit was the arrival of Canada's new Prime Minister Stephen Harper, who defeated Paul Martin in an election in January 2006.

At the time of the Waco Summit, Prime Minister Paul Martin, although a leading member of the Chrétien government that had been so consistently anti-American, and particularly so with respect to the Bush Administration, had significantly curbed such outbursts among his caucus members and put Canada-U.S. relations back on a hopeful track. Since so much of the SPP was tied up in rapport among leaders and their willingness to support the process, the small shift in tone on the part of the Liberal Party under Paul Martin was undoubtedly one of the reasons Waco was successful, or happened at all.

Canadian Prime Minister Stephen Harper was a newcomer to the SPP at Cancún, and untested in international summitry. He was also the head of a minority government, one that rested on a plurality, but not an outright majority of the seats in the Canadian House of Commons, and therefore could be brought down by a united vote of opposition members. The Canadian prime minister's support for the SPP was critical since the SPP structure relied on high-level leadership engagement for success, but Harper's view of the SPP was initially unclear. The Conservative Party of Canada that Harper leads supports closer ties to Washington and claims credit for the successful negotiation of the Canada-U.S. Free Trade Agreement during the Mulroney government. However, the Harper government had inherited the SPP from Martin and the Liberals, a government Harper had spent much of the previous year trying to undermine from the opposition benches.

For President Bush at the start of 2006, the war in Iraq promised to be the dominant issue through mid-term elections in November and the political capital that the president won by re-election had almost all been spent. The reduced political fortunes of the president corresponded to an increasingly difficult relationship with Congress, including with members of his own party. This

was apparent in the uphill climb the president had to embark upon to win approval of a free trade agreement with five small Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) plus the Dominican Republic. The debate over the Central American Free Trade Agreement (CAFTA) had been simmering before May of 2004 when the CAFTA negotiations had been completed. In promoting CAFTA, the Bush administration was fighting many of the old arguments levied against the NAFTA a decade earlier, now recast against an agreement with a rhyming name.¹⁸ When the White House finally did win approval for CAFTA it was by the narrowest of margins.¹⁹

Another intervening factor that altered perceptions of the SPP between Waco and Cancún came in May of 2005 when the Council on Foreign Relations in the United States released its Independent Task Force Report No. 53, *Building a North American Community*. Drafted by a task force organized by the Council on Foreign Relations, the Consejo Mexicano de Asuntos Internacionales in Mexico, and the Canadian Council of Chief Executives, and composed of respected academics and former government officials from all three NAFTA countries, *Building a North American Community* recommended the establishment of a customs union and common security perimeter by 2010.²⁰ The authors of *Building a North American Community* explicitly linked their recommendations to the SPP, calling them “ambitious proposals that build upon the recommendations adopted by the three governments at the Texas summit of 2005.”

Building a North American Community generated the kinds of predictable criticism that had become common in U.S. trade politics. Grand ideas such as customs unions or security perimeters were easy targets for anti-trade and anti-globalization activists. The SPP was designed to limit that kind of criticism by focusing on the low-politics of technical barriers to trade liberalization and security cooperation. However, in the year between Waco and Cancún, the SPP began to attract more and more attention from civil society and members of Congress who wanted to know what was going on. The *Building a North American Community* report deserves credit for raising public expectations regarding what the SPP could, or should, accomplish, possibly altering the perceptions of the leaders and the participants in SPP working groups themselves.

The June 2005 SPP Report to Leaders cited “roundtables with stakeholders, meetings with business groups and briefing sessions with legislatures, as well as with other relevant political jurisdictions” in putting together SPP working groups and agendas.²¹ Yet, the degree of stakeholder consultation that actually took place between Waco and the SPP Report to Leaders is unclear. Clearer is the fact that special interest demands for input and consultation after Waco led to a significant shift in the SPP’s structure and operation at Cancún.

In the United States the demand for information (transparency) and input (accountability) in the executive branch conduct of trade negotiations has grown since the early 1970s. This pressure has come from special interests (businesses and NGOs) and ultimately from Congress, whose members react to pressure from special interests in many cases by championing special interest causes. The Trade Act of 1974 reasserted the considerable constitutional prerogatives of Congress over U.S. trade policy by increasing congressional oversight capacity.

One of the more important reforms of 1974 was the creation of private sector advisory groups with which the president was required to consult regarding trade negotiating objectives.²² The Act established the Advisory Committee for Trade Policy and Negotiations (ACTPN) and was comprised of, “representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests.” Indeed, the formal consultation process has been subsequently extended beyond the ACTPN to include trade policy committees on the environment, intergovernmental relations, labor, agriculture, and 16 other Industry Trade Advisory Committees representing different sectors of the U.S. economy.²³ The role of these advisory committees in setting the U.S. negotiating agenda has only grown with each successive piece of Congressional legislation granting the president negotiating authority. By the time of the Trade Act of 2002, also known as Trade Promotion Authority, Congress had effectively scheduled and regularized the range and frequency of consultations between itself, private sector interests, and executive branch agencies over trade policy.²⁴

In addition to the operation of similar stakeholder consultation mechanisms during the NAFTA negotiations,

a series of informal consultative procedures known as “nonmarkups” and “nonconferences” between members of the administration and key figures on the House Ways and Means or Senate Finance committees became more entrenched as part of the policy process. These “nonmarkups” and “nonconferences” effectively became negotiating sessions between administration officials and members of Congress after an agreement was complete, but before implementing legislation was sent to Capitol Hill, about the legislation that would finally be introduced.²⁵

What is interesting about this in the context of the SPP is that whereas the previous three decades of U.S. trade policy formulation had featured growing levels of private and Congressional consultation, the SPP as it emerged from Waco in 2005 did not factor in formal special interest input or a role of Congress.

At Cancún, the three leaders pronounced themselves pleased with the progress made by officials on the “early harvest” items in the first year of the SPP.²⁶ The Cancún communiqué reaffirmed commitments to cooperatively addressing emergency management issues, preparing contingencies for outbreaks of avian influenza, collaboration on energy security, and more work on securing borders. However, at Cancún, tangible progress on the SPP agenda was difficult to assess. Even when the August 2006 Report to Leaders was released, the overwhelming majority of agenda items had either been “initiated” or were “on track.”²⁷ As with the 2005 Report to Leaders, the near-term accomplishments of the SPP in the August 2006 Report to Leaders were again items that were arguably part of a process of bilateral or trilateral cooperation that pre-dated the SPP.²⁸ In addition, most of the accomplishments were conspicuously bilateral in a Canada-U.S. context. For example, the Report to Leaders announced the completion of a Canada-U.S. Integrated Border Enforcement Team (IBET) threat assessment, the exchange of threat assessment methodologies to protect critical infrastructure in the food and agriculture sectors, and joint work to bring security improvements to air cargo services.²⁹

Slower-than-hoped progress on the larger items on the agenda during that period led to a discussion among Bush, Harper, and Fox on how to increase the momentum behind the effort. For the United States, this meant somehow engaging support from the private sector. Mexico was concerned that the SPP seemed a poor sub-

stitute for the North American vision that Fox had articulated at the start of his presidential term, and wanted to see the SPP presented in terms of a positive step toward a bright future for North American relations that would redeem this part of his legacy.

The Cancún summit provided an opportunity to revisit the structure of the SPP to address the leaders’ concerns. To that end, the leaders called for the establishment of the North American Competitiveness Council as a private sector forum for business input and consultation with the SPP working groups.

The North American Competitiveness Council (NACC) was formed in direct response to an organized private sector effort at outreach that originated in the United States. In early January 2006, United Parcel Service, the Council of the Americas, and the North American Business Committee convened a series of meetings to open a public-private dialogue on the SPP.³⁰ In March 2006, the Council of the Americas and the U.S. Chamber of Commerce invited government and private sector leaders from all three countries, including Commerce Secretary, Carlos Gutierrez, to discuss ways the business community could be involved in creating a more competitive economic space in North America.³¹ Anti-trade critics point to the NACC as an example of business interests having an excessive influence on the direction of North American integration.³² Yet, a more plausible explanation is that the SPP as a trilateral process for dealing with economics and security had become paralyzed by its scope and lack of stakeholder input. The NACC is a private sector initiative to offer assistance proactively to the SPP.

The NACC got started in May 2006. In the United States, the U.S. Chamber of Commerce and the Council of the Americas collaborated in forming the secretariat for the U.S. section of the NACC. Following a May meeting open to private sector stakeholders, fifteen large U.S. companies active in North American trade volunteered to serve on the executive committee, with the understanding that they would represent the sector in which they operate and not the interests of their individual companies.³³ The U.S. Chamber and the Council of the Americas invited participation from a number of business associations to widen the representation for small and medium sized businesses and those companies that chose not to apply to be considered as NACC executive committee members. This Advisory Committee

NACC RECOMMENDATIONS FOR 2007

1. Speed up development of national critical infrastructure protection strategies.
2. Enhance emergency management and pandemic preparedness through expanded use of specific disaster planning and simulations.
3. Agree to implement before the end of 2007 planned land preclearance pilot projects.
4. Improve the benefits of voluntary business participation in security programs.
5. Further simplify the NAFTA rules-of-origin requirements.
6. Simplify the NAFTA certification process and requirements.
7. Withdraw or suspend the U.S. Animal and Plant Health Inspection Service (APHIS) interim rule of August 26, 2006.
8. Sign a new North American Regulatory Cooperation Framework and ensure consistent application of standards and regulatory requirements within each country.
9. Require regulators to reference international technical standards.
10. Eliminate withholding taxes on cross-border interest payments between Canada and the United States.
11. Build capacity and enhance cooperation in financial regulation.
12. Modify the air cargo transport services agreement between the United States and Mexico.
13. Complete a coordinated Intellectual Property Rights (IPR) Strategy.
14. Develop a public-private North American initiative to tackle counterfeiting and piracy.
15. Focus on trilateral collaboration to expand the supply of highly skilled people in the energy sector throughout North America.

includes more than 300 members from all three countries, drawn from companies, associations, and chambers of commerce.

In Canada, the Canadian Council of Chief Executives (CCCE), a respected business lobby group, served as the secretariat for the Canadian section of the NACC. The Canadian government selected top corporate leaders (presidents or chief executives of their respective companies) to participate, many of them members of CCCE.³⁴ As with the U.S. section, the CCCE acting as the secretariat solicited input from other Canadian business associations and organizations in order to include the views of smaller businesses.

While NACC's U.S. section was organized around major firms and not individuals, and NACC's Canadian section was organized around prominent CEOs, the Mexican section of the NACC took a hybrid approach, drawing participation from the individuals who led large business associations and some who led large firms—and some who did both.³⁵ The secretariat for the Mexican section of the NACC was the Instituto Mexicano para la Competitividad—IMCO (which translates as the Mexican Institute for Competitiveness).

The leaders' at Cancún asked the private sector membership of the three sections of the NACC to undertake four tasks, and report back within twelve months:³⁶

- Consider issues that could be addressed trilaterally or bilaterally
- Address issues of immediate importance, and provide strategic medium and long-term strategic advice.
- Provide input on the compatibility of the security and prosperity agendas
- Offer suggestions on the private sector's role in promoting North American competitiveness.

The NACC was intended to build on existing mechanisms, such as the U.S.-Mexico Partnership for Prosperity (P4P), and the leaders' made clear that the NACC would not displace private sector consultations already on-going at the SPP working group level, or in any other forums established for consultation by agencies, departments, or ministries in any of the three countries. Specific consultative initiatives developed as part of the SPP work plans

(such as the Automotive Partnership Council of North America or the industry-government working group on steel).

The mismatch among members of the three sections of the NACC placed considerable responsibility on the secretariat organizations. In large part due to their efforts to engage members and other private sector voices, and to their hard work in collaboration with each other, the NACC deliberated and was able to produce a consensus report for presentation to the cabinet-level SPP Ministerial group in February 2007.³⁷

The NACC produced more than 50 consensus recommendations, separating them into three categories: priorities for 2007, those that should be completed by 2008, and those that should be completed by 2010. The recommendations for 2007, which the NACC members hoped would be addressed by the time Bush, Harper and new Mexican President Felipe Calderón met at the third North American Leaders' Summit, to be hosted by Canada, represented fifteen actions considered the most realizable during the remainder of 2007.

The NACC recommendations for 2008 and 2010 were presented in three categories, each with topical headings that were, in many cases subdivided into those items that the NACC members felt should be addressed by SPP working groups in 2008 and others designated for 2010, with the distinction made on the basis of the anticipated difficulty involved.

The recommendations of the NACC in each of the three timeframes are specific, and in some cases address bilateral (rather than trilateral) irritants. Collectively, they made a clear public statement about the need for a process to address barriers to economic integration and security cooperation among the North American countries that neither NAFTA, nor the Smart Border Action Plans had successfully resolved to the satisfaction of business.

The NACC achieved a remarkable degree of success. The three national sections overcame differences on issues and the mismatch of members at different levels of seniority to deliver a set of consensus recommendations that are practical and actionable. The timetable they offer is realistic. Moreover, they delivered their report on time. The final test will be at Montebello, when the governments either act on, or ignore, the NACC recommendations. Regardless, the

NACC RECOMMENDATIONS FOR 2008 AND 2010

(topics by category)

Border Crossing Facilitation

**Emergency Management
and Post-Incident Resumption
of Commerce**

Improving Border Infrastructure

Movement of Goods

Movement of People

Standards and Regulatory Cooperation

Food and Agriculture

Financial Services

Transportation

Intellectual Property Rights

Energy Integration

Cross-border Energy Distribution

Human Resource Development

Sustainability and Energy Technologies

Mexican Domestic Policy Reform

Enhanced Dialogue and Cooperation

FUTURE OF NORTH AMERICA 2025 ROUNDTABLES

- 1. Methodology for Global and North American Projections**
- 2. The Future of North American Labor Mobility**
- 3. The Future of North American Energy**
- 4. The Future of the North American Environment (Atmosphere and Climate Change, Fresh Water, Biodiversity and Bio-invasion)**
- 5. The Future of North American Security**
- 6. The Future of North American Competitiveness (Trade and Market Integration, Technological Innovation, Human Capital Development, Intellectual Property Rights and Regulatory Regimes)**
- 7. The Future of North American Border Infrastructure and Logistics (for Labor Mobility, Energy, Environment, Security, and Competitiveness)**

work of the NACC stands as one of the most important steps forward after Cancún.

Just as the *Building a North American Community* study emerged between Waco and Cancún and had an impact on the public perception of the work being undertaken under the SPP, between Cancún and Montebello a second effort emerged, *The Future of North America 2025*.³⁸ For this study three private, nongovernmental research institutes were selected and funded by the governments to hold a series of expert roundtables and workshops to make reasonable forecasts of the kind of challenges faced by the three countries, many of which were a direct consequence of continental economic integration and resulting economic growth. Each of the think tanks participating in the project was well-regarded for past work on North American issues: in the United States, the study was a project of the Center for Strategic and International Studies (CSIS); in Mexico, the study was a project of the Centro de Investigación y Docencia Económicas (CIDE); and in Canada, the study was a project of the Conference Board of Canada.

Together, the three think tanks planned a series of seven roundtables that would convene 20 to 50 specialists for focused discussions including scholars of all three countries hosted in one place by one of the three think tanks. The three research institutions determined that in looking ahead at North American trends, they could not ignore the context of global trends, giving the *Future of North America 2025* a larger perspective than the NACC or even the SPP.

After Cancún, the *Future of North America 2025* drew some criticism for meeting privately; the special interest NGOs that were most critical of the SPP saw the think tanks coordinating the project as potentially being a way to voice their concerns about what the governments of the United States, Canada, and Mexico might—for they remained suspicious of the public statements by government officials about the SPP—be planning. The fact that the *Future of North America 2025* project, unlike the NACC, was funded by the governments with taxpayer dollars, further encouraged SPP critics to seek access to the deliberations of the think tank scholars.³⁹

The final report of the *Future of North America 2025* is to be presented to the three governments at the end of September 2007, after the Montebello Summit.

The leaders meeting at Montebello will face greater

scrutiny from the media and respective domestic political critics than at either the Waco or Cancún summits. Special interest NGOs have organized broad coalitions in each of the three countries to attack the SPP from both progressive and conservative angles. Virtually every meeting of government officials, former government officials, private sector representatives, or academics with North America as a topic has drawn protests. One such group is the North American Forum, a private, informal discussion group co-chaired by former Secretary of State, George Schulz, former Alberta Premier Peter Lougheed, and former Mexican Finance Minister Pedro Aspe. The third gathering of the North American Forum held in Banff, Alberta in September 2006 drew participants from major North American multinational corporations, noted pro-integration academics and think tank specialists, and featured presentations by a number of senior government officials from all three countries. It was attacked by special interest NGOs as a secret meeting of power-brokers akin to the Trilateral Commission or the Bilderberger Group. Meetings such as these might generate the odd policy idea that ultimately weathers public scrutiny and is implemented. Yet, like the SPP itself, groups like the NACC, the *Future of North America 2025* project, or the North American Forum are widely condemned by civil society as menacing to the public and highly “undemocratic.”⁴⁰

Prelude to the Montebello Summit (2007)

All three leaders arrived at Montebello with domestic political problems, and chose not to make the SPP a central focus of their meeting thereby inviting criticism from mobilized special interest critics in civil society. It would be possible to discuss common regional concerns without making a public push for the SPP, although the investments made since Cancún, particularly those of the private sector through the NACC, are such that if the leaders did not address the SPP at all, this would be likely to inflame critics of the lack of transparency and accountability of the SPP process (who will assume that the leaders are moving ahead despite silence on the SPP in an attempt to act in secret).

As host, Prime Minister Harper was gracious but cautious at Montebello. He governs with a minority and therefore may be the next of the leaders to face an election.⁴¹ Mexico's President Calderón won a narrow election victory in 2006 over Andrés Manuel López Obrador, who continues to claim the election was fraudulently stolen from him and operates a shadow government as a platform for repeating his claim to be the head of the legitimate government of Mexico. In addition, Calderón has begun a crackdown on Mexican drug traffickers that has led to a spike in violent confrontations with police across the country. And, the Montebello Summit took place as the Category 5 Hurricane Dean crossed the Yucatán peninsula and headed for central Mexico. Finally, President Bush remains preoccupied with the deployment of troop reinforcements as part of a new offensive in Iraq as congressional Democrats, as well as some Republicans, debate timetables for troop withdrawals. While Montebello might have been an opportunity for the president to change the subject for a couple of days, politics in Washington, particularly Iraq policy, always has potential to overshadow the substance of summit agendas.

Another expected agenda item at Montebello was migration. Montebello was the first meeting between Bush and Calderón since President Bush's immigration reform proposals failed to win congressional approval in June. Harper was likely to raise with Bush the pending deadline for implementation of a law that requires U.S. citizens to present passports for re-entry to the United States and the congressional measure to mitigate the effects of this measure on border economies and cross-border tourism (known as the Western Hemisphere Travel Initiative, or WHTI). While immigration was never an explicit SPP agenda item, most Mexicans and Canadians see regularization of mobility across the border as central to the idea of an integrated North American economic space.

The U.S. Congress that rejected the Bush administration proposal for immigration reform followed up by targeting the SPP in late July. In debate over the annual appropriation bill to fund the Department of Transportation for fiscal 2008 (H.R. 3074), an amendment was introduced by Representatives Duncan Hunter (R-CA) and Marcy Kaptur (D-OH) to prohibit any appropriated funds from supporting SPP working group activity by the Department of Transportation. The nominal

targets of the Hunter-Kaptur amendment were two-fold; the administration for its lack of responsiveness to congressional requests for updates on SPP activities, and the fictional 12-lane NAFTA Superhighway, erroneously thought to be part of the SPP agenda, which would link all three countries and begin the rapid erosion of U.S.

sovereignty. Hunter-Kaptur was not approved by the Senate and may not survive in conference in the fall of 2007. However, the amendment's bipartisan support in the House (Yea 362, Nay 63) was a signal to the Bush administration that it would face future conflicts with Congress over the SPP.

III. PROSPECTS FOR THE SPP AFTER MONTEBELLO

The Outcome at Montebello

Annual summits provide important opportunities to publicly display high-level support for the SPP. During the closing press conference of the Montebello Summit, each of the three leaders tried to deflect the criticism of the lack of transparency in the SPP by mocking critics as conspiracy theorists. Harper noted, “I’m not sure that these are generally expressed concerns, but a couple of my opposition leaders have speculated on massive water diversions and superhighways to the continent—maybe inter-planetary—I’m not sure.”⁴² Calderón added, “As a matter of fact, there are several myths about this meeting. Some are jovial, funnier than others. But what we tried to do was simply to meet, talk about our common problems, and see what we can do in practical terms in order to improve the lives of our people, whether it is to standardize the parameters for chocolates or medicines. I think these are common sense things.”⁴³

But it was President Bush who showed the most emotion in his response to a question about criticism of the SPP:

“We represent three great nations. We each respect each other’s sovereignty. You know, there are some who would like to frighten our fellow citizens into believing that relations between us are harmful for our respective peoples. I just believe they’re wrong. I believe it’s in our interest to trade. I believe it’s in our interest to dialogue. I believe it’s in our interest to work out common prob-

lems, for the good of our people. And I—I’m amused by some of the—some of the speculation, some of the old—you call them political scare tactics. That’s—if you’ve been in politics as long as I have, you get used to that kind of technique, where you lay out a conspiracy and then force people to try to prove it doesn’t exist. And that’s just the way some people operate. I’m here representing my nation. I feel strongly that the United States is a force for good, and that I feel strongly that, by working with our neighbors, we can be a stronger force for good. And so I appreciate that question. I’m—I—I—I’m amused by the difference between what actually takes place in the meetings and what some are trying to, you know, say takes place. It’s—it’s quite comical, actually, when you realize the difference between the reality and what some people are talking on TV about.”⁴⁴

Although it was clear from these statements that the three leaders at Montebello were aware of the criticism of the SPP, they did not address it with a major retooling of the SPP process.

The Montebello Summit produced some significant results that were announced in the final communiqué of the meeting. The most developed was a North American Plan for Avian and Pandemic Influenza, a detailed document that included principles to guide cooperation in a public health emergency, resolution of important legal issues that had inhibited such cooperation in the past, and a commitment to joint exercises and training for public health officials in all three countries.⁴⁵ Less detailed but still promising documents were announced

on the Security side (an Intellectual Property Action Strategy to combat piracy and counterfeiting) and on the Prosperity side (a Trilateral Agreement for Cooperation in Energy Science and Technology).⁴⁶

One measure of the effectiveness of the SPP going into Montebello was going to be the responsiveness of the leaders to the fifteen recommendations of the North American Competitiveness Council, a body created by the leaders at Cancun to help focus SPP activities. The Montebello announcements directly address five of the NACC recommendations.

- **Enhance emergency management and pandemic preparedness through expanded use of specific disaster planning and simulations. (NACC recommendation #2)**
- **Sign a new North American Regulatory Cooperation Framework and ensure consistent application of standards and regulatory requirements within each country. (NACC recommendation #8)**
- **Require regulators to reference international technical standards. (NACC recommendation #9)**
- **Complete a coordinated Intellectual Property Rights (IPR) Strategy. (NACC recommendation #13)**
- **Develop a public-private North American initiative to tackle counterfeiting and piracy. (NACC recommendation #14)**

And, if we include announcements by the NAFTA Commission the week prior to Montebello (more below) as being part of the Prosperity Agenda, then a strong case for the summit having successfully addressed seven of fifteen NACC recommendations can be made.

- **Further simplify the NAFTA rules-of-origin requirements. (NACC recommendation #5)**
- **Simplify the NAFTA certification process and requirements. (NACC recommendation #6)**

Potentially the most significant outcome of the Montebello Summit was a new SPP Regulatory Cooperation Framework.⁴⁷ In typically cautious language, the Framework states that it is “voluntary” and “sets out

steps to improve regulatory cooperation, where appropriate and feasible, while maintaining each Partner’s right to carry out its regulatory functions according to its domestic legal and policy requirements.”

However, this document refines and makes public some promising “rules of the road” for working group members negotiating on standards and regulatory matters. Specifically, the SPP Regulatory Cooperation Framework sets three goals:

- 1. To strengthen regulatory cooperation, including at the outset of the regulatory process:** Regulatory cooperation should be strengthened on a systematic basis through increased transparency in the rulemaking process, exchanges of best practices, and information sharing among regulators.
- 2. To streamline regulations and regulatory processes:** Regulations and regulatory processes can be streamlined through the increased use of joint analysis or evaluation of regulatory issues of mutual interest, information exchange on implementation approaches, or work-sharing, as well as through existing mechanisms, such as the SPP Prosperity Working Groups, North America Free Trade Agreement (NAFTA) working groups, and bilateral and/or trilateral undertakings among the Partners.
- 3. To encourage compatibility of regulations, promote the use or adoption of relevant international standards, as well as domestic voluntary consensus standards, in regulations, and eliminate redundant testing and certification requirements, consistent with our World Trade Organization (WTO) obligations:** These goals will be pursued through, for example, the work of the SPP Prosperity Working Groups, NAFTA working groups and bilateral and/or trilateral undertakings among the Partners.

The SPP Regulatory Cooperation Framework responds directly to the most potent criticisms of the special interests by linking process transparency to the strengthening of overall cooperation among the three governments. It makes the streamlining of regulations, and the compatibility of regulatory processes, explicit goals; this makes the intent of the SPP clearer and addresses the concern than harmonization to a single standard or the removal of regulation entirely was intended. Additionally, the

three countries agree to work toward accession where practical to international standards—a recommendation made by the NACC—to simplify compliance for businesses selling in international markets, beyond North America. The reference to international standards may also reassure those critics who feared that the SPP would prompt a “race to the bottom” through harmonization to minimal standards—something that the governments always rejected, but which was asserted anyway. Now, it is possible to offer a defense of the SPP in this area.

In fact, the SPP Regulatory Cooperation Framework confirms the SPP as it had been operating, but makes public and explicit the operating assumptions of the negotiators. This reflects the main advance in the SPP that is offered in the Regulatory Cooperation Framework, which is the commitment to greater process transparency. If this goal is translated into practice, fair-minded observers will certainly come to reject the more speculative and alarmist criticisms of the SPP. Special interests should respond to greater transparency by providing scrutiny to working group discussions that may be critical, but will be more substantive in nature than in the past. That would greatly strengthen the SPP, and represent the greatest accomplishment at Montebello.

Some caution is warranted in regard to the commitments in the Montebello Regulatory Cooperation Framework. Similar commitments were made in Chapter 9 of the NAFTA, which created the NAFTA Working Groups. These were supposed to facilitate information sharing, and promote the adoption of regional best practices and internationally accepted standards. Yet, in practice the NAFTA Working Groups often stalled for lack of political support by one or more of the three governments.

The NAFTA Free Trade Commission—annual meetings of the U.S. Trade Representative with Canadian and Mexican counterparts intended to provide political support for the NAFTA Working Groups as needed—met the week before the Montebello Summit in Vancouver, British Columbia and reported on substantive progress toward further simplifying rules of origin, clarifying procedures for Chapter 19 dispute settlement mechanisms, and a new trilateral mutual recognition agreement covering architects. The NAFTA Commission also agreed to develop a work plan to address North American competitiveness that includes the facilitation of trade (i.e. the reduction of non-tariff measures) in four specific sectors: swine, steel, consumer electronics, and chemicals. Lastly,

the Commission instructed their officials to review the mandates and operation of the NAFTA Working Groups with the aim of re-invigorating them. Yet, as ambitious as the NAFTA Commission seemed at Vancouver, efforts to re-invigorate, or even move beyond, the NAFTA are nearly as old as the NAFTA itself. Initiatives announced in Vancouver are the product of several years of Commission meetings and reflect the slow pace of work on the “built-in agenda.”

The SPP was designed in part to address the perceived shortcomings of the NAFTA Working Groups and to renew work on the unfinished “built-in agenda” of NAFTA. At Montebello, the leaders continued to favor the SPP process over the NAFTA Free Trade Commission, despite its renewed commitment at Vancouver. Yet it should be remembered that NAFTA has certain advantages over the SPP; namely is both a formalized agreement with the force of an international treaty and has legislative approval in all three countries. Although the tariff-reduction provisions of NAFTA will be completely implemented on January 1, 2008, NAFTA will continue shaping North American integration for decades to come. The current design of the SPP lacks NAFTA’s permanence, and without reform, the SPP working groups may stall after President Bush leaves office; if it does, the task of negotiating North American arrangements may rest once again solely on the NAFTA Working Groups (as re-invigorated by the NAFTA Commission) and without an apparent successor for security negotiations.

The SPP faces major challenges after the Montebello Summit. Criticisms by special interests became the focus of much of the media coverage of the leaders’ meeting, and progress on the NACC recommendations satisfies only some of the concerns of the business community with a large number of difficult tasks remaining. The U.S. Congress has become more assertive in challenging the SPP. With concerns expressed by both Democrats and Republicans about the SPP process, congressional oversight (in the form of committee hearings and possibly further attempts to constrain U.S. participation in the talks through the appropriations process) is certain to increase. The effort to revive the NAFTA Working Groups and a more traditional process led by trade ministers (in the form of the NAFTA Free Trade Commission) sends a signal that the three governments are hedging their bets

on the SPP, preserving the option of an alternative that may also become the safety net should items on the Prosperity agenda of the SPP fall out.

The Bush administration's investment in the SPP has been significant, measured in terms of political capital, the time and talent of executive branch officials from the president to senior cabinet members to the assistant secretaries chairing the 20 SPP Working Groups to the numerous working level specialists involved in the process. The renewed efforts of the NAFTA Free Trade Commission and NAFTA Working Groups will increase that investment. President Bush will host the next North American Leaders' meeting in 2008, providing him with a final chance to revisit the structure of the SPP and make changes to improve its chances of surviving in some form under his successor.

Can the United States Negotiate North America This way?

The criticisms of the SPP in the United States from both left and right are related in part to the lack of progress achieved through the SPP so far. If the SPP working groups had produced more, the criticisms of the process could be answered by evidence of success. To be fair to the many people involved in the SPP process in all three governments, the SPP is new and has had only a short time to perform. The leaders at Cancún attempted to adjust the SPP to produce more results and greater public confidence by establishing parallel efforts to advise and focus the SPP. The leaders at Montebello adopted a Regulatory Cooperation Framework that pledged greater transparency while insisting that the effort had no hidden agenda, and was reflected fully in the documents that were freely available on their SPP web sites.

Yet the problems of the SPP are not solely attributable to the controversial nature of the subject matter, or the difficulty of making progress beyond the "early harvest" agenda items.

The structure of the SPP is itself a weakness. Canada and Mexico can cope with domestic challenges and continue on the current course, but without change the SPP seems certain to fail in the United States. In order to achieve the ambitious goals set by the leaders of the United States, Canada, and Mexico at Waco and reaf-

firmed at Cancún the SPP needs to be restructured to better meet the three perennial challenges of a U.S. international negotiation.

ASYMMETRY: At first glance, the SPP seems to have some characteristics that lend themselves to minimizing the effect of asymmetry in North America. The leaders and cabinet-level counterparts meet regularly as sovereign equals, despite differences in the size and wealth of the three economies. This kind of interaction goes considerable distance toward altering the straightforward payoff structures that pure power calculations suggest might dictate outcomes.

In the absence of yearly leaders' meetings, the SPP would not likely be able to sustain itself as a process. It has no legislative timetable apart from the objectives endorsed by the three leaders, and it relies on the importance each leader attaches to the agenda. The engagement of the leaders and their cabinet-level co-chairs serves as a motivating force for difficult domestic interagency cooperation and for cooperation among civil service counterparts in the other countries. In short, when the president or prime minister wants something done, it is more likely to concentrate minds of officials to act. Additionally, when the three leaders happen to like one another, this redounds to the benefit of cooperative endeavors like the SPP. However, if and when the leaders lose enthusiasm or are distracted from North America (as U.S. presidents are prone to doing), the dependence of the SPP on leadership support will loom large.

The current design of the SPP provides some benefits in managing asymmetry as an ongoing process of cooperation rather than a sprint to reach a single undertaking such as a treaty. The SPP's extensive and ongoing agenda achieves this by presenting regular opportunities for the weaker partners to raise matters of importance with the United States. From a U.S. point of view, the commitment to ongoing discussions on irritants related to shared economic and security concerns is the price that must be paid by the most powerful partner in the SPP to induce cooperative behavior.

The SPP further mitigates the asymmetric power relationships between the North American countries by tackling low-politics issues in regulation, infrastructure protection, border management, and information sharing that can most fruitfully and apolitically be dealt with at a technical and bureaucratic level.

The exception to the relative success of the SPP in the management of asymmetry has been on the Security agenda. While U.S. officials in the Department of Homeland Security and other agencies share a broad consensus on the threat posed by international terrorism and the minimum steps necessary to establish a security baseline to protect U.S. citizens from future attacks at home, it has become increasingly clear that Canadian and Mexican officials, and the stakeholders living in their border regions do not fully share this perspective. The consensus that emerged after 1996 on both sides the U.S. northern border about border improvements has led to successful change through the U.S.-Canada Smart Border Action Plan, but that consensus now needs to be renewed. The U.S.-Mexico Smart Border Action Plan has been similarly successful, but public acceptance of additional changes has yet to emerge, and has likely been undermined by separate congressional initiatives to secure the U.S. southern border with tougher enforcement measures adopted by the United States on its own.

As former U.S. Ambassador to Canada, Paul Cellucci once said, for the United States “security trumps trade.”⁴⁹ In the context of the SPP, security and prosperity are not equally negotiable. Without a renewal of some consensus among stakeholders about the necessary and sufficient levels of baseline security that the governments can work together to achieve, progress on the Prosperity agenda will increasingly be held up by disagreements over the Security agenda. U.S. insistence on security in the absence of a consensus among the governments and stakeholders in this area will tend to reinforce, rather than reduce Canadian and Mexican sensitivity to asymmetries in North America and undermine the prospects for the SPP.

CONGRESS: The U.S. Congress has no formal role in the SPP. As criticism of the lack of transparency and public accountability of the SPP negotiations has grown, congressional interest and concern about the SPP has also grown. There is now a handful of Members of Congress (concentrated, for now, in the House of Representatives) publicly opposed to proceeding with the SPP, and determined to convene investigations and oversight into the content of the talks. The Hunter-Kaptur amendment to the House appropriation for the Department of Transportation is a tangible example of the form that future congressional challenges to the SPP might take.

Congressional hostility represents the biggest threat to the continuation of the SPP after Montebello, and after the end of the Bush administration; as noted above, if the SPP ceases to become a standing process for discussions, Canada and Mexico are likely to lose interest in making concessions today that may presage concessions from the United States in the medium-term. The damage done to the momentum behind trade liberalization by the emergence of an organized and transnational protest movement came largely through the intimidation of the Congress, which reacted by withdrawing support for trade negotiating authority for successive U.S. presidents.

This seems to be an especially tragic flaw in the SPP, since it was predictable given the history of U.S. trade politics since 1945 and the increased attention to domestic security measures by Congress and the U.S. public following the September 11, 2001 attacks.

For the SPP to succeed after Montebello, it needs congressional input. The suspicions raised by the exclusion of Congress from the SPP, however unfounded, mean that simple concessions by the executive branch such as periodic briefings for selected committee chairmen or greater transparency for the general public will no longer be enough to satisfy congressional critics. Congressional appropriators will use the budget process to uncover SPP-related expenditures no matter how innocuously labeled within departmental budget requests, and challenge the SPP by challenging these expenses.

It is possible that cooperation among counterparts in the three governments could continue without the aegis of the SPP hanging overhead, now that the impetus for such dialogue has been renewed by the SPP. The taint of past surreptitiousness will still exact a price, however. It may ultimately be necessary to redesign and re-launch a new process to take up the work of the SPP under a new acronym and with satisfactory congressional participation in place from the outset. The governments of Canada and Mexico would be wise to insist on a role for Congress in discussion any modification of the SPP, or a successor initiative, with U.S. officials.

SPECIAL INTERESTS: The lack of special interest input to the SPP has had positive, as well as negative consequences. The SPP’s structure, particularly its emphasis on technocratic rule-making rather than political deal-making, contributed to progress on the “early harvest” agenda and thereby to building confidence in the process

among the three governments—generating a degree of process-legitimacy through these initial results. But trade, and even security are today highly political subjects in the United States (as well as in Canada and Mexico, though there it may suffice to say that relations with the United States are highly political). Citizens of all three countries have a legitimate interest in the outcomes of these negotiations, and the low-profile imputed to the talks by design at Waco fails to provide much opportunity for informed public consent or opposition to the SPP. Special interests unable to gain access to the SPP through other means have engaged citizens as powerful allies in demanding more information or a halt to the SPP, and the fact that the special interests have had the means to threaten the SPP in this way from the outside is a direct result of the design of the SPP process which first excluded special interests entirely, and after Cancún included only a select few.

The most extreme charges of the critics are baseless, unhelpful and should be forcefully rebutted by the leaders, members of the Ministerial group, and others with direct knowledge. The SPP is not subverting democracy, and to the extent there has been activity, it has occurred under existing legislative authority and oversight procedures. For some, the fact that the SPP is cast as a trilateral initiative is enough to generate opposition, but the critics are not simply isolationists. The fact is that opposition has embraced a range of arguments against the SPP coming from both the political left and the right.⁵⁰ Unlike previous debates over the NAFTA or WTO in the 1990s, this backlash is coming from a fractious group of critics, and not a unified movement. This is the product of a lack of information and transparency; where groups may not agree on their complaints, they unite in a demand for more information and to insist on slowing or halting a process in which they have no confidence.

The one positive development at Cancún was the emergence of the NACC, which made a substantial contribution to the SPP through serious attention to the issues, hard work to form a consensus among businesses in all three countries, and concrete, actionable recommendations published and made public (not given privately) that could be taken up by SPP working groups in future negotiations. To ensure that greater SPP transparency promised in the SPP Regulatory Cooperation Framework announced at Montebello succeeds, the leaders should consider the fact of NACC's success as

well as the content of its recommendations; the creation of similar trilateral mandates for self-financing advisory groups to welcome constructive input and scrutiny from other special interests could alleviate the concerns of these groups, and reduce their ability to mobilize citizen concern over the SPP.

It must be said that there are other problems that have plagued the SPP that can be traced to mistakes and misjudgments by Canada and Mexico as well. This does not alter the fact that the United States is central to the success or failure of this initiative. It was the Bush administration that conceived this approach to negotiation on North American regional concerns with Canada and Mexico and attempted to make it work. Looking ahead, the future of this effort will depend principally, though not exclusively, on what the United States does next.

Negotiating North America: Next Steps for SPP

The factors that led the Bush administration to launch the SPP remain valid concerns for U.S. interests. As the NACC report illustrated, U.S. firms are faced with redundant and confounding regulatory barriers to trade and investment in Canada and Mexico that were not resolved by NAFTA. There has emerged among U.S. private sector leaders the perception that as tariff protection of Canadian and Mexican industries has been removed, governments in these countries have turned to rule-making and regulation as methods of protecting their market from U.S. competition (often referred to as process protectionism). This is not a uniquely North American problem: U.S. business has raised a concern over similar practices worldwide that have tended to claw-back the gains made by multilateral trade and investment liberalization agreements such as the Uruguay Round agreement that created the World Trade Organization.

There are signs that debates over future North American arrangements are overflowing the limits of the SPP. On the security front, the Canadian government has been able to find support among U.S. businesses in its effort to delay or modify the passport requirement for U.S. travelers re-entering the United States, and to demonize the WHTI, which was intended by Congress as a

gesture to soften the impact of the new passport rule. Similarly, the Mexican government under Felipe Calderón has sought and found help from U.S. businesses on recent U.S. immigration legislation. The relationship between the Department of Homeland Security and many U.S. business interests has deteriorated in recent years, in part, because of the inability of DHS to reconcile many of its own organizational problems. Private sector frustrations with DHS have resulted in growing ambivalence, and in some instances hostility, to certain initiatives, all of which disturbingly signal an end to easy and even eager cooperation between DHS and business in securing supply chains and facilitating legitimate cross-border trade. This trend is alarming, because DHS by its own admission has still not reached the new baseline of improved security that it was created to achieve in the days after the September 11 attacks.

Although the United States has been successful in averting another terrorist attack on its soil of the magnitude of those in 2001, the danger has not receded and may even have increased.⁵¹ Without the voluntary support of the U.S. private sector, DHS will fail in its mission. Business reservations about security open the door to exploitation by groups such as al Qaeda that have been remarkably sophisticated in capitalizing on divisions among Americans.

All of this is particularly disheartening for supporters of the SPP process. By explicitly addressing the seemingly irreconcilable imperatives of Prosperity and Security simultaneously, the SPP has always had the as yet unrealized potential to deal with any growth in ambivalence by the business community toward security. Yet, much like the absence of a formal congressional role, the lack of broad-based business input to both sides of the agenda suggests a difficult road ahead for the SPP.

The SPP was never devised by the three governments as a plot to subvert U.S. sovereignty or lay the foundation for a “North American Union,” which would require an investment of far more thought and political capital than the SPP has ever been given in order to achieve them. The lukewarm response of the wider U.S. business community, bordering on indifference, as the SPP has foundered makes the charge that the SPP is the vanguard for hyper-globalization equally ridiculous. At Cancún, there was the rare coincidence that all three leaders were political conservatives; it might have seemed possible then to recast the SPP as a conservative

program of regulatory reform designed to eliminate red tape and promote a free market. That didn’t happen, and there is little proof that the SPP qualifies as a neo-conservative stratagem. The rationale and design of the SPP were always far more modest.

Canadians and Mexicans have indulged in reasonable doubts and paranoid fantasies about the SPP no less than their U.S. counterparts. The low public profile design of the SPP has tended to reinforce these misgivings in all three countries. Yet the defensive posture adopted by Canadian and Mexican diplomacy frequently drags citizens in both countries down to wallow in victimhood. North American arrangements, as a consequence, are seen by many Canadians and Americans, as things that the United States will impose on them, not as matters of mutual interest and benefit. The final P in the SPP—Partnership—is one that depends as much on Canadian and Mexican ability to rise to the occasion and to negotiate with agency as it does on the outcome of U.S. efforts to manage asymmetry to foster an atmosphere in which all sides can believe that it is possible to attain a beneficial outcome.

What U.S. negotiators must realize however is that North America in the internet age can become an echo chamber in which Canadian and Mexican fears are amplified by U.S.-based criticism, and when the latter goes unanswered, the effect is corrosive to public support in all three countries. Worse, after a period of reverberating recriminations when breakthrough agreement is achieved, the Canadians and Mexicans will be more anxious and resistant to North American cooperation than before and the U.S. public more hostile and skeptical as well.

This is why the United States cannot simply walk away from North America after Montebello, and neither can Canada or Mexico. The way forward has two more chances for fixing the short-comings of the present process to address the growing need for cooperation in the management of continental economic integration and security.

USA 2008: The rotation of hosting responsibilities will give President Bush the chance to host, and shape, the next North American leaders’ summit in 2008. Bush deserves greater credit for his 2004 recognition of the need for a dialogue to foster cooperation with Canada

and Mexico on economic and security issues of common concern in North America. Despite a full agenda, Bush and his administration have invested time and effort in the SPP that has been significant. The president's second-term legacy could still include progress in North American relations, and to achieve this Bush could claim partial success for any progress made toward the NACC's more focused priority items and then restructure the SPP to soften the approach to asymmetry, include Congress, and better engage business. If the Montebello reforms contained in the SPP Regulatory Cooperation Framework provide greater transparency, and non-rejectionist NGOs and even Congress can begin to act as responsible watchdogs to the negotiations, then the atmosphere for the next summit may be conducive to additional progress and reform.

AFTER BUSH (2009): The leadership of the United

States is the crucial ingredient in the negotiation of any North American agreement, and when a new U.S. president is inaugurated in 2009 there naturally will be a re-evaluation of the SPP. It may be a post-mortem, or an assessment of ongoing work; in either case, the views of governments in Ottawa and Mexico City will be sought on how to proceed. At this point, all options will be re-opened: summits may be discontinued, proceed on the same cycle, or become more frequent. Trilateral negotiations may continue, or the United States may choose parallel bilateral discussions with each partner. It is also possible that North America will be a declining priority for the United States as other issues take precedence for the new U.S. administration. This last option would be unfortunate, because the U.S. national interests that drew the Bush administration to pursue the SPP will remain at risk without greater cooperation between the United States and its neighbors. ■

IV. NOTES

1. The authors would like to thank the William H. Donner Foundation of New York and the Donner Canadian Foundation of Toronto for their generous support of Hudson work on North American issues, including this paper. In addition, we are grateful to Mr. Shad Thevenaz for his research assistance.
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http://www.spp.gov/2006_report_to_leaders/prosperity_annex.pdf?dName=2006_report_to_leaders and http://www.spp.gov/2006_report_to_leaders/security_annex.pdf?dName=2006_report_to_leaders

28. For example, the rules of origin process under the NAFTA, the negotiation of a Canada-U.S. Framework for Cooperation on joint infrastructure protection, or a U.S.-Mexican pilot program for Chicago and El Paso governing the orderly and human repatriation of Mexican nationals, and joint U.S.-Mexican efforts to curb money laundering.
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32. "Newly Uncovered Commerce Department Documents Detail "Security and Prosperity Partnership of North America" Judicial Watch press release, September 26, 2006 published the initial results of a Freedom of Information Act request to have the NACC membership, as well as the primary U.S. government staff members responsible for the SPP released to the public. Available at: <http://www.judicialwatch.org/5979.shtml>
33. The U.S. section of the NACC included: Campbell Soup Company, Chevron Corporation, Ford Motor Company, FedEx Corporation, General Electric Company, General Motors Corporation, Kansas City Southern, Lockheed Martin Corporation, Merck & Company, Mital Steel USA, New York Life Insurance Company, Procter & Gamble (which joined only in 2007), United Parcel Service, Wal-Mart Stores, and Whirlpool Corporation.
34. The Canadian section of the NACC included: Dominic D'Alessandro of Manulife Financial, Paul Desmarais Jr. of Power Corporation, David Ganong of Ganong Brothers, Ltd., Richard George of Suncor Energy, E. Hunter Harrison of Canadian National Railway, Linda Hasenfratz of Linamar Corporation, Michael Sabia of Bell Canada Enterprises, James Shepherd of Canfor Corporation, Annette Vershuren of Home Depot Canada, and Richard Waugh of the Bank of Nova Scotia.
35. The Mexican section of the NACC included: José Luis Barraza of Grupo Impulso and Realiza & Asociados, Gastón Azcárraga of the Consejo Mexicano de Hombres de Negocios and Mexicana de Aviación and Grupo Posadas, León Halkin of the Confederación de Camaras Industriales, Valentín Díez of the Consejo Mexicano de Comercio Exterior, Jaime Yesaki of the Consejo Nacional Agropecuario, Claudio X. González of the Centro de Estudios Económicos del Sector Privado and Kimberly-Clark de Mexico, Guillermo Vogel of TAMSA, César de Anda Molina of Avicar de Occidente, Tomás González Sada of Grupo CYDSA, and Alfredo Moisés Ceja of Finca Montegrande.
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40. A Google search of "SPP" reveals more than 86,000 results, the majority of which are decidedly opposed to the SPP. By comparison, a similar Google search for "NAFTA" generates more than 12 million results, with a similar distribution between support and opposition. See for example, www.stop-spp.com, or www.conspiracyarchive.com which focuses on the "conspiracy" surrounding the North American Forum.
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43. Ibid.
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45. "North American Plan for Avian and Pandemic Influenza" August 2007. Available at: <http://www.spp.gov>
46. "Joint Statement: Prime Minister Harper, President Bush, and President Calderón, North American Leaders' Summit" August 21, 2007. Available at: <http://www.spp.gov>
47. "Canada/United States/Mexico: SPP Regulatory Cooperation Framework" Memorandum of Understanding. August 2007. Available at: <http://www.spp.gov>
48. "North American Leaders to Tackle Security, Competitiveness Imbalance" *Inside U.S. Trade* July 20, 2007, page 5.
49. Quoted in J.L. Granatstein, "The Importance of Being Less Earnest: Promoting Canada's National Interest Through Tighter Ties with the U.S.," C.D. Howe Institute Benefactors Lecture, Toronto, October 21, 2003
50. From the right, see Jerome Corsi, *The Late Great USA: The Coming Merger with Mexico and Canada* (Los Angeles: WND Books, 2007). From the Left, see Public Citizen, "Global Trade Watch" at: www.publiccitizen.org/trade.
50. See National Intelligence Council, "Declassified Key Judgments of the National Intelligence Estimate "Trends in Global Terrorism: Implications for the United States"" April 2006. NIE concluded that al Qaeda had been seriously damaged as a result of early post-9/11 counterterrorism efforts, but that the organization had rebuilt itself and was a growing threat to the United States.

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