MEXICO, CANADA AND THE UNITED STATES FREE TRADE AGREEMENT NEGOTIATIONS: AGRICULTURAL AGENDA AND DISPUTE SETTLEMENT MECHANISM

James F. SMITH

The author touches upon various questions which will likely surface from the drafting of a free trade agreement between Canada, Mexico and the United States. He describes the problems which have arisen between the United States and Mexico concerning agricultural products. He then analyzes possible dispute settlement mechanisms in light of those existing in the GATT, the EEC and the NAFTA (North American Free Trade Agreement).

L'auteur aborde diverses questions que soulèvera l'élaboration d'un accord de libre échange entre le Canada, le Mexique et les États-Unis. Il décrit les problèmes soulevés entre les États-Unis et le Mexique par certains produits agricoles. Il analyse ensuite les mécanismes de règlements des différends possibles à la lumière de ceux existant dans le cadre du GATT, de la Communauté Européene, et de l'Accord de libre échange entre le Canada et les États-Unis.

Free trade agreement negotiations between Canada, Mexico and the United States are now beginning (summer, 1991). In the short run the FTA may not

have as much importance as has generally been ascribed to it. The Mexican and United States economies are already substantially integrated. Significant trade liberalization has been proceeding at a rapid pace since 1986 when Mexico joined the GATT. However, the FTA may be of more immediate importance for agriculture. Substantial tariff and non-tariff trade barriers in agriculture still exist betwen Mexico and the United States. An FTA, however, does not necessarily mean that the parties are going to liberalized their agriculture trade regime. This sector has proven to be most resistent to trade liberalization in the word economy. The difficult problem of the US-European Community agricultural subsidies was the principal cause of the breakdown in negotiations at the formal end of the Uruguay Round of the GATT.

In the Canadian-United States free trade agreement, agricultural trade liberalization was relatively limited. But some reduction of trade barriers did occur in the areas of tariffs, export subsidies, certain non-tariff areas, and technical regulations. Additionally, both countries pledged to develop a set of rules and discipline on subsidies and dumping, although this is not confined to agriculture. These measures have apparently had a positive impact as the United States-Canada agricultural trade has increased since January, 1989 when the agreement entered into effect.

The tripartite negotiations do present the oportunity for dramatic US-Mexican agricultural trade liberalization. Mexico is the second largest agricultural supplier of the United States right after Canada. Mexico is the third largest export market for the United States right after

Japan and Canada. This article will first briefly trace some of the major issues that will be on the negotiating table respecting US-Mexico agricultural. Secondly, the agricultural trade disputes of these two countries will be described. The article will conclude by comparing alternative dispute settlement mechanisms (DSM) by referring to the experience of the GATT, the US-Canada FTA and the European Community.

The most important commodities in the US-Mexico negotiations would seem to be those having the greatest value. These would be Mexico's export of horticultural products to the US and US exports of grains and oil seeds to Mexico.

HORTICULTURE

Tariffs remain a significant barrier with respect to horticultural trade. The trade weighted average tariff in the United States is 7%. In Mexico it is 11%. Phytosanitary regulations in both countries, import licensing in Mexico and market orders in the United States constitute significant non-tariff barriers. Nonetheless, Mexico is the largest supplier of horticultural products to the United States. These products now value well over a billion dollars a year. And the growth rate has been some 11% annually. In contrast, Mexico is the seventh largest export market for US horticultural products. Although the total value has been less than 200 million, this small luxury crop market has been growing at the rate of 26% a year.

Complaints from the US asparagus, broccoli, and cauliflower industries recently prompted an investigation by the US International Trade Commission (ITC) study on Mexican competition. The ITC found little threat in

Mexico's market share of the US market in fresh asparagus (seventeen percent), broccoli (four percent), and cauliflower (one percent). However, the ITC discovered significant inroads in frozen asparagus (twenty-one pecent), broccoli (thirty-three percent), and cauliflower (forty-one percent), followed by a four percent share of canned asparagus. Mexican frozen avocado pulp is also being exported in increasing volume to the United States. Those trends demonstrate the erosion of the technological advantage that the Unites States traditionally enjoyed. Processing "know-how" has taken root in Mexico whether by foreign investment, transfer of technology or the simple fact that Mexican exporters are increasingly sophistecated about both the US market and state of the art production tecniques.

Undoubtedly, Mexico enjoys a comparative advantage with respect to citrus fruits and winter vegetables which are manually harvested. In contrast, the United States has a temperate climate ideal for production of apples, pears, berries and potatoes. But overall Mexico's obvious climatic advantage, lower labor costs and ready access to the US market give Mexico the comparative horticultural advantage. However, Mexican fresh products are often barred by high tariffs. Some are quite high. For examaple, 73% for olives, 35% for melons and tomatoes, 21.2% for jicama and pumpkins, etc. Marketing orders which restrict the timing, size and grade of fruits and vegetables, are even more of a barrier to Mexican tomatoes, onions, grapefruits, oranges, olives and table grapes. Phytosanitary barriers further restrict southern movement of Mexico's horticulutre. The Unites States banning of avocados

and small sour lemons, as well as restrictions on shipping mangoes, garlic, citrus, and potatoes due to disease concerns, continue to generate controversy between the two countries. Lime restrictions are now being relaxed but the Mexican avocado weevil remains as the barrier to fresh Mexican avocados.

If there were to be immediate and complete liberalization of tariff and non-tariff barriers, there is little doubt that one would see an immediate increase in Mexican horticultural export to the United States. The price of these products is elastic and the barriers are significant. The greatest increase would be seen in tomatoes, cucumbers, asparagus, broccoli, cauliflower, lettuce, peppers, onions, squash, avocadoes, citrus fruit, grapes, melons, guavas, mangoes and roses. The increase in processed products (frozen and canned) would be even greater. Liberalization would also undoubtedly attract substantial additional foreign investment in horticultural processing in Mexico. Mexico's processed products are growing at a rate of 20% a year in the US market compared to 5% a year growth for fresh fruits and vegetables. It is hardly surprising that California, Arizona, Texas and Florida growers have registered unanimous opposition to the free trade agreement. And their opposition remains potent despite the fact that the president has fast track authority. These interests will remain important behind the scenes players, through their Congressional representatives, as the negotiations proceed.

GRAINS AND OIL SEEDS

Grains and oil seeds account for two thirds of all United States agricultural exports to Mexico and 70% of Mexico's

imports of grain. US growers enjoy the competitive advantage of natural resources, marketing and a huge agricultural business support network. These imports would undoubtedly be even greater if Mexico did not restrict their entry through import licensing which function like quotas. Licensing is only permitted when domestic supplies have been exhausted.

Like most developed countries US agricultural policies promote exports[1] and protect agricultural producers from foreign competition through quotas[2] and subsidies.[3] Target prices and commodity loans have produced large surpluses. Aggressive subsidization of US commodity exports and credit programs achieved a twenty-six percent export increase in fiscal 1988. Wheat accounted for two-thirds of the volume increase. Corn, feeds, fodders, and vegetable oils comprised the remaining

1 The Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 480, provides export credits, and the Export Administration Act, 50 U.S.C. § 2401-242 (1982 & Supp. V 1988), authorizes export controls. The Export Enhancement Program (EEP) subsidizes export sales with commodities from the inventory of the Commodity Credit Corporation. 5 Int'l Trade Rep. (BNA) 1201 (Aug. 24, 1988). The program remains highly controversial. US trading partners claim that it inflates world farm prices, and U.S. consumer groups claim that it raises prices and may jeopardize the supply of essential food grains. 5 Int'l Trade Rep. (BNA) 1211 (Aug. 31, 1988). The United States has sold wheat under the EEP to Algeria, Egypt, India, Colombia, China, and Mexico and has offered dairy cattle sales to Morocco and Turkey.

2 The Agricultural Adjustment Act of 1933, 7 U.S.C. § 624 (1988), the Agricultural Act of 1956, 7 U.S.C. § 1854 (1988) (presidential authority to negotiate import reductions) and the Meat Import Act of 1979, 19 U.S.C. §§ 2461-65 (1988), authorize import quotas.

3 Agriculture subsidies have increased in the United States from $2.7 billion dollars in 1980 to $25.8 billion in 1986. European Economic Community (EEC) subsidies increased from $ 6.5 billion in 1976 to $21.5 billion in 1986. Valdnes,"La Agricultura en la Ronda de Uruguay: Los Intereses de los Países en Desarrollo" *Comercio Exterior*, Nov. 15, 1986, at 798-99.

third.[4] Processing and storage facilities are large and provide significant low cost advantages.

Despite these advantages, the US grain producers have been losing world market share. Accordingly, US grain and oil seed producers are very interested in increasing exports to Mexico. In contrast, Mexico's grain and oil seed producers are small, inefficient and relatively high cost. Foreign investment in Mexico has not been significant as US products can easily be exported from US based farms. Another boon to US exports to Mexico is the US government loans to Mexico for grain and oil seed purchases. In fiscal 1991, 1.2 billion wil be made available through the GSM102 program to underwrite such loans. These will cover bulk sales and corn, coarse grains and oil seeds. Soy fortified tortillas are probably just around the corner.

Mexico now annually imports $3 to $4 billion of basic grains alone, incluiding wheat, corn, dry beans, soybeans, seeds, and dairy products.[5] But further liberalization in these commodities would present Mexico with significant political difficulties. Rural producers would not be able to compete. Guaran-

4 The United States spends approximately one billion dollars per year on the EEP, but contends that the EEC spends 10 times that figure. Under the "Target Export Assitance" (TEA) program exporters receive agency funds. The USD allocated $200 million under the TEA program for 1989. 5 Int'l Trade Rep. (BNA) 1095, 1305, 1515, 1546 (Nov. 7, 1988). The USDA created a Trade Assistance and Planning Office to help U.S. exporters develop markets for farm products overseas as part of the Foreign Agriculture Services (FAS) office. 5 Int'l Trade Rep. (BNA) 1610 (DEC.12, 1988). The 1988 Omnibus Act increased to 900 the number of employees in the FAS who will, to the "maximum quantity practicable", devote their activities to expanding foreign markets to include U.S. agricutural commodities. The Act also authorizes reimbursement for costs in defending such procuder in foreign, unfair trade parctice litigation. Pub. L. No. 100-576, 102 Stat. 1393, 1397.

5 5 Int'l. Trade Rep. (BNA) 1095, 1305, 1515, 1546 (Nov. 7, 1988).

teed prices (in effect price controls) have operated to eliminate many small producers while consumers have benefitted. Nonetheless, market prices for the producers would be even lower without tariffs and import licensing. Although, the Mexican government has talked openly of rapid liberalization its would carry an enormous cost in terms of massive emigration of these small producers who continue to produce for their own subsistence and the domestic market.

MEXICO-UNITED STATES AGRICULTURAL TRADE DISPUTES OF THE 1980'S. UNITED STATES UNFAIR TRADE PRACTICE LAW

Given the political economies of the agricultural sectors in both countries it appears likely that complete liberalization will not occur in the near future. A reduction of tariff as well as non-tariff barriers will probably be phased in. A phase in period suggests the continuation of ad least some of the existing agricultural trade disputes. Very few of the US-Mexico trade disputes have been resolved through the GATT dispute settlement mechanisms. In the 1980s, the US preferred to resolve its trade disputes with Mexican exporters through "unfair trade practice" procedures established in its own trade law. Similar processes are available under Mexican and Canadian law. US duties have been imposed on Mexican imports under the escape clause,[6] counter-

6 The escape clause allows temporary relief from imports if the ITC determines that "an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article". 19 U.S.C. § 2251 (1) (1) (1982).

vailing duties for subsidies, and antidumping duties for less than fair value sales (LTFV). In the escape clause case no unfair trade practice is required but rather material injury or threat of material injury by reason of heavy competition from imports is enough to trigger the imposition of the protective duty. Dumping or countervailing duty actions require a showing that the unfair trade practice (subsidized or below fair market value sales) caused the material injury.

Article VI of GATT sets forth international dumping law. In the famous "tomatoes wars" case the Floridaa winter vegetable growers complained that Mexico price discriminated by dumping tomatoes in the United States for LTFV.[7] In the end Mexico won the case. The Court of International Trade (CIT)[8] summarily rejected the growers' contention that the executive branch intervened in the case to assure a result favorable to Mexico.[9] However, in a

7 Plaintiffs presented a petition to the Treasury Department on September 12 of 1978. The Department issued a tentative statement regarding sales no lower than fair market value on November 5 of 1979. 44 Fed Reg. 63,588 (1979). The investigation was transferred to the Commerce Department on January 1, 1980. South West Florida winter Vegetable Growers Ass'n. v. Miller, 1 Int'l Trade Rep. (BNA) 5339 (Jan. 12, 1976). The preliminary negative decision of the Treasury Department was treated as if it had been issued by the Commerce Department on January 1 of 1980, under 733 of the Tariff Act of 1930. 19 U.S.C. 1673 (b) (1982).

8 This Court is a Court contemplated by Article III of the United States Constitution, which means it is independent from the Executive Power. 19 U.S.C. Sec. 1516a. Its judges enjoy lifelong appointments.

9 In order to nullify an administrative decision based on the existence of undue political pressures on the Secretary, the plaintiff must prove two elements. "The contents of the undue political pressure must be designed to force him to decide the issues based on factors not considered as relevant by Congress under the applicable statute... Second, the Secretary's decision must be affected by said external considerations". Southwest Florida Winter Vegetable Growers Ass'n, 584 F. Supp. in 18 (quoting Sierra Club V. Costle, 657 F. 2d 298, 409 (D.C. Cir. 1981).

leter fresh flowers case,[10] the ITA used a different formula that disfavored the Mexican and Latin American exporters. The cases are often decided by the selection of a particular macroeconomic model, which may be quite controversial among economists.

In countervailing duty (CVD) cases duties are imposed to offset "subsidies". No member of GATT has used CVD actions as extensively as the United States. And no country has defended more CVD cases in the United States than Mexico. Petitioners in these actions, who are generally industrial competitors, have filed dozens of CVD actions against Mexican exporters challenging programs under Mexico's National Plan for Industrial Development. The United States International Trade Administration (ITA) has found these governmental bounties to be "subsidies" and has subjected exports form such industries to CVDs because the programs benefitted especific regions or industries.[11]

Despite these adverse rulings other CVD cases brought in the US have treated Mexican agricultural "subsidies" more generously. For example, the CIT has ruled that subsidies may be considered "generally available" and therefore not subjet to additional

10 Certain Fresh Cut Flowers, 9 Int'l Trade Rep. (BNA) 2103 (Mar. 3, 1987). The ITA found that Mexico was selling flowers LTFV in the United States. Using a average weighted American price with a foreign market value based on prices in the domestic market. The ITA also calculated averages to take into consideration end of the day sales of perishable flowers. The ITA accumulated imports from several exporting countries, found damage to the national industry, and imposed antidumping duties to cover the "dumping" margin.

11 47 Fed. Reg. 54,846 (1982) (red lead and lead stabilizers); 51 (porcelain kitchenware on steel base Fed. Reg. 36, 447 (1986).

duties if only a narrow and specific group utilizes them.[12] The ITA has also ruled that agriculture is a multiple industry in Mexico and subventions to that sector, therefore are not countervailable.[13] By the same reasoning, the ITA has held that providing water at a uniform rate to all agricultural producers in a particular region was not a bounty or grant to a particular producer. Moreover, the ITA held that Mexico's system of setting prices for fertilizers was not a subsidy because Mexico established the prices on a country-wide basis for all products. [14]

MEXICO UNFAIR TRADE PRACTICE LAW

Like other GATT members before, Mexico passed unfair trade practice legislation in Novembrer, 1986 to provide for the imposition of duties on imports to offset subsidies and dumping.[15] Mexico has invoked the legislation and regulations against US exporters of various products in dumping actions. Countervailing duty actions against US agricultural exports would appear to be legally viable.[16] But such actions

12 Cabot Corp. v. United States. 620 F. Supp. 722 (Ct. Int'l Trade 1985). The CIT continues to articulate this doctrine in several decisions related with Cabot after its original decision. Cabot Corp. v. United States, 788 F. Supp. 949 (Ct. Int'l Trade 1988) (reenvoi order sustained as not appealable): Cabot Corp. v. United States 10 Int'l Trade Rep. (BNA) 1736 (July 21, 1988) (annual review appeal challenged).

13 Fresh Cut Flowers of Mexico, 49 Fed. Reg. 15,007 (Apr. 16, 1984); Fresh Asparagus from Mexico, 48 Fed. Reg. 21,618 (May 13, 1983)

14 Fresh Asparagus from Mexico, 48 Fed. Reg. 21,618 (May 13, 1983).

15 *Reglamento para prácticas desleales de comercio internacional, Diario Oficial,* 24 November, 1986, See in general, Witker, Jorge and Patiño Manffer, Ruperto, *La defensa jurídica contra prácticas desleales de comercio internacional,* México, Editorial Porrúa, (1987).

16 Smith, Mexico and Antidumping, Business Mexico, June 1987, 40.

have not been entertained for other reasons. Certainly cheaper imports help to control inflation. The fact that these products are heavily subsidized does distort trade but Mexico like other feel importing countries generally argues for a gradual phase out of this subsidies instead of their sudden elimination. Also most countries have not pursued CVD actions like the US but have concentrated on antidumping actions instead.

DISPUTE SETTLEMENT MECHANISMS

It is likely that any tripartite agreement will include a complicated formula for the phasing in of liberalization measures. This would suggest recurring issues of interpretation. It is also likely that the tripartite FTA would not resolve all existing disputes such as the environmentalists complaints about Mexican tuna fisheries practices and the allegedly unnecessary killing of dolphins or the infamous Mexican avocado weevil. In fashioning dispute settlement mechanisms (DSMs) one may properly refer to several models. These would include the GATT, the Canada-US FTA and the Court of The European Community.

THE GATT

The GATT contemplates consultation (requests between contracting parties to review procedures), negotiations, and mediation in order to resolve dis-

putes.[17] The GATT also provides for joint action to facilitate its objectives as well as waivers of obligations in certain circumstances (art. XXV). Informal dispute resolutions have been utilized such as submission of interpretative issues to the GATT chairman. The formal dispute settlement procedure (art. XXIII) is rarely used because it is difficult to obtain, since it works by consensus, and a majority vote is required for sanctions. It is diplomatically offensive in requiring a concrete complaint by one member nation against another. The GATT Council or a "working party" (a body whose members are from each nation) or an appointed panel (individuals not from the nations involved) is designated to consider complaints but their findings are not legally binding until the GATT contracting parties (those involved in the dispute) approve their report. This allows the party complained against to prevent any resolution of the matter to their disliking and further invites endless delays.

By te mid-eighties some 159 formal disputes had been brought before GATT (since 1948). The United States initiated 36% of these cases and was the recipient of a complaint in 14%. Almost one-half of the disputes involved agriculture. One-half of the cases were settled or withdrawn before the report was issued. Virtually all of the reports issued are adopted by the GATT contracting parties and aproved by GATT as a whole.

17 Mainly GATT Art. XXII but also see Arts. XIX, XVIII, XII y II.

THE CANADIAN-US FTA

During the Canadian-US FTA negotiations Canada made it clear that they wanted an exemption from United States "unfair trade practice" proceedings. The antidumping duties and CVD has been widely criticized in Canada, as well as Mexico, as protectionism in legalistic guise. The US refused to modify its trade laws but did agree to establish binational panels to deal with such trade dispute. The FTA provides that cabinet level commission, may assign panels or experts or agree to binding arbitration on matters that effect the FTA in general (chapter 18). Unfair trade practices disputes are still to be decided under existing countervailing duty or anti-dumpling laws but the administrative decisions in each country are to be reviewed by binational panels (chapter 19). Such panels are to be composed of two members from each country who in turn chose the fifth member. While these panels are supposed to be temporary, while the parties negotiate to harmonize their unfair trade practice laws, the panels are already rendering binational decisions that are giving procedural and substantive content to unfair trade practice law. It seems likely that this emergent body of case law will be highly influential to the rule making working groups and to future binational panels.

The dispute settlement mechanisms of chapter 18 has been used in fisheries disputes (Canadian herring landing requirement and US restrictions on lobster size). The former decision was resolved by reference to a panel of experts whose recommendations were

accepted by the commission. Canada has refused to accept the recommendations in the lobster case. Although the panels must apply both the substantive and procedural (judicial review) standars in the country whose administrative decisions it is reviewing the panel decisions have shown considerable independence. In two of the first cases, *Red raspberries* and *Chilled Pork*, duties were imposed in the United States on Canadian products on the basis of findings by the ITA and International Trade Commission (ITC) which were later reversed by the FTA binational panel.

The *Red Raspberries*[18] case was a dumping case, in which the ITA decision to use constructed value instead of Canadian sales in their LTFV formula, that was reversed. In the *Chilled Pork*[19] CVD case, involving over $300 million in sales to the US the meaning of the upstream subsidies provision of US countervailing duty law was at issue. The panel remanded the ITA determinations, that pork processors had received the full benefit of subsidies to hog growers, by ponting out that there were other commercial products derivative of the hog. The panel also remanded the question of whether the subsidies were "generally available" or in fact only used by a few producers and remanded the issue of threat of material injury. As a result of the remand the ITC reversed it's decision. The US National Pork Producer Council claimed that the panel exceeded its jurisdiction and asked for review by the Extraordinary Challenge Committee.

18 *Red Raspberries from Canada*, USA 89-1904-01.
19 *Fresh chilled and Frozen Pork form Canada*, USA 89-1904-11.

It is likely that these two cases would not have been decided the same way by a single judge on the US Court of International Trade. Clearly the process is seen as more impartial. Of perhaps greater importance is the apparent willingness of the panels to develop concepts of FTA law.

For example one panel noted:

> Whenever possible, the Tariff Act [U.S. Trade Law] should be construed in a manner consistent whit the GATT. This is particularly true when a Binational Panel is reviewing antidumping determinations under the law. In its preamble, the FTA states that one of the significant reasons why the government of Canada and the United States reached the agreement was to build on the mutual rights and obligations under the GATT.[20]

In the Chilled Pork case a binational panel found a violations of FTA principles of fairness with respect to a partial reopening of the record on remand despite objections by the US petitioners that certain US case law, on the meaning of the due process

20 *Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada,* USA, 90-1904-1.

clause of the constitution, supported their position. Again the panel seemed quite willing to refer to concepts inherent in the purpose of the FTA rather than be confined to questions of US law. One would be hard pressed to find decisions by a CITjudge that would have other wise decided these cases, where broader multinational concepts carried more weight than domestic law.

EUROPEAN COMMUNITY

Professor Friedrich K. Juenger has noted that the creators of the European Community foresaw the need for a powerful judicial body which would supplement the constitutional texts with judge-made law. Regional economic integration necessarily implied the necessity to unify, harmonize or in some maner account for the differing legal systems. Article 3(h) of "The Treaty Establishing the European Economic Community"[21] lists the "approximation of the laws of the member States" as one of the means to achieve treaty objectives. Assimilation is mandatory in some areas and permissible in others. The treaty also contemplates the use of the comparative method as well as the extraction of "general principles of law common the member states".[22]

21 March 25, 1957, 298 U.N.T.S. 3.

22 See for example, Articule 215, paragraph 2 of the EEC.

Former Advocate General Maurice Lagrange, noted that the European Court "should select from all the member countries (laws) of the various national solutions which taking into account the treaty objectives, appear as the better ones". Once applied these principles become a vital part of Community law, whatever the differences between the rule of stare decisis may be.

CONCLUSION

Te economies and cultures of Canada, the United States and Mexico are substantially integrated. This fact of life, however, has not been recognized in the juridical sense, namely by codification or creation of law making or law interpreting bodies. The DSM will to some degree commence that inevitable and essential evolution. The challenge of liberalization in agriculture illustrates that often the political economies make it unlikely that the FTA itself will dissolve protectionist barriers. However, the creation of tripartite judicial bodies may play a critical role here that would be impossible for the national political structures. For example, it would have been politically impossible for the US Congress to have legislated the result of the *Chilled Pork* case. The fact that US government has filed an extraordinary challenge to the binational panels decision does not necessarily imply an undermining of the FTA, but rather signals a willingness to resolve delicate political matters in an impartial bilateral forum. Similarly, one can imagine a trilateral commission appointing a panel of experts to make recommenda-

tions concerning the current embargo of Mexican tuna fish and banning of Mexican avocados. While such recommendations might not be accepted, as ocurred in the Canada-US lobster dispute (chapter 18), the likelihood such resolution would in most cases be enhanced by the elaboration of an analysis and recommendation by a ground of multilateral experts.

The tripartite negotiators have much to learn from the European experience. Rather than *ad hoc* panels a more permanent institution such as the European Court and Commission should be considered. The fact that common and civil law traditions will be combined should not detrac from the unifying importance of developing a cohesive body of judge made law in furtherance of the treaty objectives themselves. What better method to erode the protectionist tendencies of the individual members.

BIBLIOGRAPHY

"The likely impact on the United States of the free trade agreement with Mexico", report to the Committee on Ways and Means of the United States House of Representatives and the committee of finance for the United States Senate on investigation number 332-297 under § 332 of the Tariff Act of 1930 (United States International Trade Commission publication 2353, February of 1991), Washington, D.C. 20436.

SMITH, James F., "United States-Mexico Agriculture Trade", 23 *U.C.D. Law Review* 431 (1990).

Ag Exporter, United States Department of Agriculture, Foreign Agricultural Service, March 1991.

"Competitive Conditions in the U.S. Market for Asparagus, Broccoli and Cauliflower", U.S. International Trade Commission, Pub. No. 2136 (1988).

"U.S.-Mexico Trade: Trends and impediments in Agricultural Trade " 2 (1990), General Accounting Office (1990).

JUENGER, Friedrich K., "The Role of Comparative Law in Regional Organizations".