

THE POLITICAL-ECONOMY AND THE CAUSES OF COMPLIANCE OF TRADE
AND INVESTMENT AGREEMENTS: NAFTA AND THE SWEETENERS SECTOR

A THESIS SUBMITTED TO
THE STANFORD LAW SCHOOL
STANFORD UNIVERSITY
IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
DOCTOR OF SCIENCE OF LAW

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May 2009

ABSTRACT

Fifteen years ago, the three nations of North America, two developed and one developing, formed a regional trade and investment pact, in order to, among other things, promote economic growth, regulate foreign investment, and harmonize custom procedures. Overall, the enterprise has been relatively successful, resulting in increased trade and investment between the three nations. However, NAFTA has also given rise to a remarkable number of trade and investment disputes in the sweeteners sector. While NAFTA's dispute settlement mechanisms have been active in addressing these disputes, they proved to be relatively ineffective in resolving the disputes and achieving the integration of the high fructose corn syrup and sugar industries of the U.S. and Mexico, as NAFTA's negotiators originally hoped. As a result, the sweeteners sector conflict expanded to the WTO dispute settlement system and to Mexico's highest courts, further muddying the waters.

This work attempts to understand the sweeteners conflict by analyzing its origins, development, and eventual partial settlement. The larger interest of this work lies in identifying how international economic institutions like NAFTA can promote and build regional governance in the economic sphere. In this regard, this work first examines the causes that led to adherence to, compliance with and evolution of NAFTA. Then, relying on a rich variety of primary and secondary sources, the work analyses the factors that produced the checkered record in the sweeteners sector, including the failure to achieve adherence to the goals of NAFTA's negotiators and the lack of compliance with some of the terms that were agreed to, and the subsequent evolution of the Agreement in this sector.

The study of the sweeteners sector under NAFTA provides an opportunity to critically assess the predictive power of several of the leading theories of international law compliance. In addition, in the face of multiple episodes of non-compliance, this study enables us to evaluate the effectiveness of NAFTA's binding third-party dispute resolution mechanisms, which were originally touted as a powerful institutional safeguard to ensure compliance with the Agreement. The case reveals the way in

which fragmentation of the dispute resolution process under NAFTA in particular, and in the sphere of international economic law more generally, undermined the effectiveness of the Agreement's dispute resolution machinery. Indeed, the study of the negotiation and implementation of NAFTA's sweeteners provisions serves more generally to illuminate and critically evaluate important changes in the structure and processes of international economic law in an increasingly pluralistic environment, in which the legal system increasingly recognizes the role and status of multinational businesses and other non-governmental actors. The study reveals the important role that non-governmental actors play in the process of construction and development of international economic law and proposes ways to tackle some of the main challenges resulting from this development.