NAFTA Energy Security: A Question of Collective Identity Formation

Travail dirigé

Directeur de recherche : Jean-Philippe Thérien

Présenté au département de science politique en vue de l’obtention de la maîtrise en science politique

Université de Montréal

27 février, 2007
# Table of Contents

I. Introduction 1

II. What is NAFTA? 7

III. Energy Security under NAFTA 20

IV. Member-State Energy Policies 24

  * United States 27

  * Canada 30

  * Mexico 33

V. Energy Security and Identity 37

VI. Conclusion 46
I. Introduction

Energy security is ranked at the forefront of nation-states policy priorities. Interdependence between regional state actors has become inevitable as nation-state territorial borders have become increasingly permeable because of an ever increasing demand for energy. While world market demand for energy grows, the price of non-renewable energy continues to escalate at unprecedented rates. Accordingly, state actors seek to shield their national economies from world economic price volatility through the creation of regional agreements. The North American Free Trade Agreement (NAFTA) has played an indispensable role in further liberalizing and integrating regional trade and investment in a range of economic sector; however, the energy market has yet to reach similar levels of integration. Deepening North American energy security integration requires member-states’ ability to institutionalize their energy security interests under NAFTA.

This essay seeks to demonstrate using the social constructivist approach that North American energy security is characterized by weak integration because of the nature of NAFTA’s institutional arrangement. NAFTA caters to market investor interests over government intervention within the market economy contributing to low political identification between member-states. As a result, the regional character of member-state political relations is based on asymmetric outcomes leading to distrust permeating the regional political landscape. NAFTA has generated reluctance in member-states desire to coordinate and harmonize their energy security interests through the making of regional policy initiatives intended towards strengthening North American energy security. The dynamic of member-state political and economic interactions under NAFTA undermines the process of regional energy market

---

unification.\(^2\) Energy security remains nation-state specific, instead of being regionally identifiable. Accordingly, North American energy security is characterized by weak integration. Deepening energy security integration under North American regionalism requires that member-states institutionalize their energy security policy interests under NAFTA.

This thesis is separated into three joint ventures aimed towards demonstrating the dynamics of energy security integration under NAFTA. The first three chapters describe the nature of NAFTA’s regulatory and institutional structure. The purpose of the first three chapters is to demonstrate that regional energy security integration is characterized by weak integration because of the nature of NAFTA’s institutional arrangement. The second part of the essay begins on chapter four and discusses member-state national energy policies and consumption patterns. The purpose of this chapter is to illustrate that member-state energy markets are interdependent and that member-states maintain an interest in deepening energy security ties in face of growing national energy security dilemmas. The last section of this essay starting on chapter five named “Energy Security and Identity” seeks to explain that institution building and collective identity formation go ‘hand in hand’ in deepening regional energy security integration under NAFTA.

Deepening regional energy security integration implies strengthening energy supply networks between member-states and applying regional programs aimed towards promoting sustainable development and regional energy infrastructure development. These programs necessitate the process of institution-building at the regional level providing member-states’ the incentive to intervene within the regional market economy by coordinating and harmonizing their energy policy initiatives under NAFTA. However, member-states’ ability to regionalize their energy security interests is hindered because of the regulatory nature of NAFTA.

In view of increasing world energy prices and rising national energy consumption patterns, member-states maintain an interest in initiating efficiency in regional energy supply management. Member-states are faced with a growing national energy security dilemma. Domestic demand for energy is increasing while non-renewable energy supply networks are becoming increasingly difficult to consolidate. Within a span of five years, world petroleum prices have increased from $20.95 a barrel in December 2000 to $55.95 a barrel in December 2006. The surge in world oil prices in 2000 has led to a more synchronized and regimented approach in the production and pricing scheme of OPEC members. North American regional energy consumption demand will grow by 50% by the year 2025 from 2000 levels. Member-state national energy policies have shown an interest in shifting energy supply dependence from the international to the regional stage. Deepening energy security integration at the regional level is a question of strengthening energy supply networks between member-states by generating greater efficiency in the regional production and distribution of energy supply provisions. However, NAFTA lacks the institutional capacity to cater to policy development initiatives between member-states leading to deepening regional energy security integration.

The definition of energy security implies more than the security of energy supply, entailing the institutionalization of member-states’ energy security policy interests at the regional level. The definition of energy security is based on “more than uninterrupted oil supplies at reasonable price levels, implying the use of sustainable development and regional energy

---

5 Hufbauer and Schott, NAFTA Revisited, 410.
infrastructure development." Faced with rising energy prices due to increasing world energy demand and diminishing established non-renewable energy reserves, governments benefit from initiating regional programs promoting the use of sustainable development and regional infrastructure development. By implementing such programs, governments prevent national non-renewable energy depletion ensuring that future generations benefit from existing and prospective energy reserves. Energy security integration refers to greater regional energy efficiency with regard to the extraction, production and distribution of energy provisions across member-state borders. Sustainable development and infrastructure development “refers to the integrity of critical infrastructures, energy efficiency, and alternative energy sources, all being crucial to economic development.” Deepening energy security integration between member-states necessitates political implications.

Institutionalizing member-state energy security policy interests at the regional level involves member-states ability to apply political authority over the regional energy market by maintaining the capacity to macro-manage regional energy pipeline infrastructure development, research and development in confecting new extractive possibilities in non-renewable energy. Regional programs based on the use sustainable development and infrastructure development within the energy sector requires the process of institution-building where member-state legislative policy initiatives are integrated within a regional authoritative body that retains independence in the capacity to make decisions with regard to issues pertaining to energy security. Hence, under NAFTA’s institutional configuration, member-states need to be enabled in communicating their energy security concerns within legitimate and official tri-lateral

---


7 Ibid.
committees. Needless to say that NAFTA’s working groups and authoritative bodies lack permanence, authority and legitimacy in their mandate to supervise the regional free-trade market with regard to policy intensive economic issues of interest between member-states.

NAFTA’s regulatory discourse is founded firmly upon free-market based principles, discouraging government interventionism within the market economy. Consequently, member-states are prevented from institutionalizing their energy security policy interests at the regional level. NAFTA’s regulatory provisions show signs of weakness since economic trade issues requiring political implications are relegated away from the core of the agreements jurisdictional authority. Consequently, the energy sector has yet to reach similar levels of integration as trade in comparable commodities since NAFTA’s energy provisions remain incomplete in their definitional criterion. NAFTA’s regulatory scheme consists of extensive documentation explaining how trade must be liberalized between member states, however little within the “thousand pages…with an additional two thousand pages of annexes” stipulates how certain market policies should be synchronized between member states.8 As a result, member-states lack incentives in the direction of coordinating and harmonizing their energy security interests under NAFTA.

Asymmetry characterizes intergovernmental relations under NAFTA creating roadblocks towards the process of deepening energy security integration under NAFTA. The relationship between member-states under NAFTA is ridden by political and economic inequalities since member-states are not practicing self-restraint in their political and economic dealings with each other. Under NAFTA’s present regulatory dispositions, member-state national sovereignty is affected since foreign market investor interests are privileged over government participation

---

within their respective markets. Since most of the Foreign Direct Investment (FDI) originates from the United States, asymmetric outcomes are generated in the distribution of wealth and power between member-states. Consequently, member-states have become reluctant to open their energy markets to NAFTA’s free-trade provisions resulting in the security of energy supply coming short from expected levels of integration. While interdependence characterizes the regional energy market, the asymmetrical nature of member-state political relations impedes the process of deepening energy security integration under NAFTA’s present institutional arrangement. As a result, distrust permeates the dynamic of member-state relations undermining the process energy security integration under North American regionalism.

Social constructivism places importance upon how ideas affect nation-state identities and interests, which structure the regional relationship between member-states. The economic nature of the NAFTA agreement influences member-state identities and interests affecting the “intersubjective or systemic quality” of energy security under North American regionalism.9 According to social constructivist methodology, member-state identities are shaped by the way “one member-state perceives itself through the other member-states’ eyes.”10 NAFTA’s regulatory provisions affect the dynamic political relationship between member-states. Consequently, regionalism is founded upon political discord impeding the institutionalization of member-states energy security interests at the regional level precluding the deepening of energy security integration under North American regionalism.

---

10 Ibid, 227.
II. What is NAFTA?

Coming into effect on January 1 1994, NAFTA has become the largest existing free-trade zone among all existing Regional Trade Agreements (RTA). NAFTA materialized in reaction to the 1981-82 international economic recessions providing incentive for Mexico, Canada and the United States to merge their economic interests under a regional platform.\(^{11}\) A free trade area was created under NAFTA where tariffs were eliminated in cross border trade and investment. NAFTA has contributed in integrating member-state economies under North American regionalism. In 1994, NAFTA’s regional economy was worth $6 trillion, with a population of 439 million. In 2004, the economic force of NAFTA has more than doubled to $12.5 trillion.\(^{12}\) Accordingly, “NAFTA has brought together three of the world’s 10 largest economies…making NAFTA the largest free trade area in the world.”\(^{13}\) By 2004, US commodities trade with Mexico increased by 290 percent. Between 1989 and 2004, cross border trade between the United States and Canada increased from 140 to 190 percent.\(^{14}\) Trade between Mexico and Canada had more than doubled from 6.5 billion to 15.1 billion dollars.\(^{15}\) NAFTA is the first free trade agreement to bring developed (Canada and the United States) and developing countries (Mexico) together.

While NAFTA has played a significant role in integrating the North American economy, the agreement has been less successful in economic areas of interest requiring the coordination of regional economic policy initiatives between member-states. The course of action for NAFTA was set when the “core of rules and norms around which state actors have made a compromise is

---


\(^{12}\) Hufbauer and Schott, *NAFTA Revisited*, 1.

\(^{13}\) Department of Finance Canada. “Speech by the honourable John Manley, Deputy Prime Minister and Minister of finance of Canada to the Canadian Chamber of Commerce in Mexico City,” (October 28, 2003), [http://www.fin.gc.ca/news03/03-053_e.html](http://www.fin.gc.ca/news03/03-053_e.html) (accessed February 25, 2007).

\(^{14}\) Hufbauer and Schott, *NAFTA Revisited*, 18.

to the benefit of market actors, mainly firms and transnational companies.”¹⁶ The regulatory nature of NAFTA based on free-market principles implies that the “…Regime has instituted the empowerment of market actors vis-à-vis government bureaucracies, and of institutional actors at the transstate level (namely panels and NAFTA-based institutions).”¹⁷ The compromise was made with the goal of preserving national-sovereignty and avoiding supra-national institution building.

Divergent perspectives exist with regard to NAFTA’s effect upon member-state national sovereignty. The founders of NAFTA made sure that the agreement privileged market interests’ over state crafting with the idea of preserving nation-state sovereignty from supra-national institutional dominance. However, prioritizing market-actor interests over government intervention within the market economy affects nation-state sovereignty since governments remain powerless to intervene within the scope of their national economies. Hence, supra-nationalism is observed as infringing on member-state sovereignty yet free-market enterprise enjoys protections under NAFTA from government interference, subsequently intruding upon member-state sovereignty.

In order to avoid supra-nationalism, NAFTA’s institutional arrangement is fragmented into different levels of authority that do not exhibit permanency and unification in their decision-making capacity. Authority is divided into three national sections, known as the NAFTA secretariat. The NAFTA secretariat supervises the dispute resolution process¹⁸ since “each national section maintains a court-like registry relating to panel, committee and tribunal

¹⁷ Ibid, 40.
The Free Trade Commission, the central institutional body under NAFTA, consists of cabinet-level representatives from the three member-countries. In fact, the Commission is not an institution in the proper sense, since it convenes only as required, or for annual meetings.

The Commission supervises the implementation and further elaboration of the NAFTA agreement and helps resolve disputes arising from the implementation of the dispute resolution mechanism. The Free Trade Commission also oversees the work of NAFTA Committees, Working Groups and other subsidiary bodies of NAFTA’s institutional arrangement. The Free Trade Commission is complementary to the three national secretariats and does not possess any independent authority. Multi-levelled governance under NAFTA lacks institutional permanence and central regional authority in the organization’s regional mandate. Consequently, NAFTA’s institutional configuration is weak in its authoritative role.

Multi-level governance dominates NAFTA’s regulatory discourse. NAFTA’s regulatory provisions are enforced on a national and transstate regional level by ad-hoc tribunals named Alternative Dispute Resolution Mechanisms (ADRM’s). Under transstate decision-making authority, jurisdictional authority is not instilled at the national or supranational level, but in an inter-fixed bound level of governance where no jurisdictional permanency exists. Disputes involving strictly market-actor complaints regarding member-state interference within their commercial affairs are resolved under chapter 11 of the agreement. Disputes between two governments or a government and market actor are resolved under chapter 19. Disputes involving strictly two governments are resolved under chapter 20. Certain trade issues remain

---

under nation-state jurisdiction while other matters such as trade and investment remain under transstate authority called “fragmented authority of nonstate actors.”

Institutionalism under NAFTA denotes the use of Alternative Dispute Resolution Mechanisms (ADRM’s) to resolve conflicts between state and non-state market entities.

Chapters 11, 19 and 20 of the agreement cover the regulatory nature of the Alternative Dispute Resolution process under NAFTA. ADRM’s are *ad hoc* tribunal systems in the sense that they are transstate institutional entities that retain no national embeddedness in the decision making jurisprudence that evolves from the tribunals’ rulings. NAFTA’s *ad hoc* tribunal system has been characterized as a “private commercial arbitration enterprise.”

From 1994 to 2002, approximately 23 investor-led disputes have been brought in front of the tribunal system. The ADRM lacks institutional permanency thus affecting the legitimacy of its decision making initiatives. The *ad hoc* tribunal system does not take into account decisions based upon precedent since “earlier decisions are not binding on subsequent tribunals.” There is no institutional permanency in the judicial decision-making process. *Ad hoc* tribunals do not retain full jurisdictional authority since decision-making is fragmented under multi-level governance where certain areas of authority remain under national jurisdiction.

Chapter 11 is one of the most important sections of the agreement representing the fundamental ideals of ‘economic governance’ within which free-trade market interests are prioritized over nation-state interests under NAFTA. Chapter 11 makes evident that NAFTA’s regulatory provisions were made to “empower market-actors vis-à-vis government

---

23 Ibid, 56.
24 Ibid, 51.
bureaucracies." The provisions under the chapter represent investors’ rights under the agreement. Private investors are equipped with ADRM systems that permit them to “sue a host country directly in the event certain disputes arise over an investment.” The ADRM system under chapter 11 is activated when an investor in a host country launches a complaint against a member-state for not abiding by NAFTA’s regulatory provisions with regards to fundamental obligations. Member-states cannot sue an investor under the ad-hoc tribunal system.

Member-states are discouraged from intervening within the market economy. In general, the obligations under NAFTA’s provisions demand that member-states treat foreign investors on their territory on an equal footing with national industries. Within NAFTA’s regulatory “standards for expropriation” obligations, member-states are discouraged from engaging in the act of expropriating FDI from their territory. If such action ensues, the market actor can demand compensation from the member-state that wishes to expropriate the corporate investor. Furthermore, “an important feature of the chapter 11 arbitral provisions is that market actors could activate a panel dispute against a state without having to go through their own governments.” Hence, transstate regional governance becomes evident under chapter 11. Under chapter 11 of the agreement, nation-states are compelled to accommodate foreign investor interests. Consequently, multinational organizations command influence over national economies.

Chapter 11 only applies to disputes between companies (non-state actors) and the state, while the provision is inapplicable in disputes between two private sector actors or two state actors. Furthermore, “final awards of arbitrated panels activated under Chapter 11 are binding,

---

26 Hart and Dymond, Precedents, 36.
28 Morales, Institutionalization, 48.
but they are to be enforced by national courts.” Chapter 11 can demand that monetary compensation be awarded to the plaintiff. Chapter 11 represents the epitome of prioritizing market forces over national interests. Chapter 11 prevents member-states’ ability to intervene within the market economy.

While chapter 11 covers investor rights, ADRMs under Chapter 19 involve the administration of anti-dumping and subsidy laws by national trade agencies. Hence, Chapter 19 maintains jurisdiction over the implementation of nationally-based law retaining authority at the national level and the transstate level. Chapter 19’s ADRM structure is based on a bi-national panel that reviews “national anti-dumping and countervailing duty determinations.” Chapter 19 resolves disputes between state-actors and conflicts evolving between state-actors and market actors. Bi-national panels under chapter 19 replace judicial review by national courts. Chapter 19 deals with the supervision of anti-dumping and subsidy laws by national trade agencies. The provision applies only to the interpretation and implementation of trade remedy laws that concern national anti-dumping and countervailing duties involving a bi-national dispute settlement.

Reminiscent to chapter 11, chapter 19 ADRM can demand that the faulting party provide monetary compensation to the claimant. For instance, because NAFTA member-states retain their domestic anti-dumping and countervailing duties laws, these panels determine whether the administrative agencies have acted consistently with the terms of their respective domestic and countervailing laws. Furthermore, “the second panel screens amendments to the parties’

29 Ibid, 49.
antidumping and countervailing laws that are challenged for inconsistency with NAFTA…”31 A two-level enforcement system subsists under chapter 19; one based on the national level and the other at a transstate level. While some decisions are made through compliance, others are reinforced and binding through monetary compensation. Multi-level governance becomes most evident under chapter 19 provisions.

While chapter 19 is applied to disputes between state and non-state market actors, chapter 20 rectifies conflicts strictly between state actors. Chapter 20 makes available a “mechanism for resolution of disputes relating to the interpretation or application of the agreement itself.”32 Since chapter 20 does not retain jurisdiction at the transstate level such as is present under chapter 11 and 19, conflicts can only be resolved through negotiation and compromise between state-actors. Chapter 20 is the least effective chapter under the agreement since decisions are not binding and cannot be enforced through monetary compensation. Hence, since chapter 20 is under national-jurisdiction, policy intensive issues cannot be enforced at the regional level. NAFTA’s ADRM system makes evident that once jurisdiction is relegated to the national level, the regulatory enforcement of NAFTA provisions become almost unfeasible. Multi-level governance has not provided an environment where NAFTA’s regulatory provisions can be reinforced and harmonized between member-states.

On the same level, dispute resolution involving labor and environment does not “provide transstate norms or principles by which parties must abide by” since environment and labor provisions are under the jurisdiction of nation-states.33 For instance, “NAFTA’s side agreements institute the oversight of nationally-based legislation at the trilateral level, via the creation of ad

31 Kevin C. Kennedy, The First Decade of NAFTA, 424.
33 Morales, Institutionalization, 46.
hoc secretariats and councils.” These institutions can call for a panel; however two-thirds of the council’s votes are needed. Furthermore, “the possibility of getting a remedy or a monetary compensation remains fairly difficult.” The regulatory nature of NAFTA prevents member-states’ ability to coordinate their policy interests since an ad hoc dispute resolution system cannot replace an institutional structure where macro-level regional issues of concern such as energy security can be deliberated and resolved through a synchronized effort between member-states. Politically sensitive trade issues are set aside from NAFTA’s authoritative jurisdiction within the transstate level.

While designed to promote regional economic integration in trade and investment under NAFTA, the ADRM arbitration system is not intended to harmonize policy intensive issues of interest between member states leading to regional policy norms and goal-setting objectives. Instead, in order to fill the regional policy-making gap, NAFTA instituted a system of reservations that exclude sensitive industries from free trade such as cultural industries for Canada and the energy sector for Mexico. Policy sensitive economic trade issues have remained under the jurisdiction of member-states or international agencies such as the International Energy Agency (IEA). Further economic integration under NAFTA necessitates the process of institution-building. Regional regulatory harmonization and coordination with regard to politically sensitive trade issues is needed in order to standardize regional compliance in areas of common interest between member-states such as energy security.

NAFTA had established a trilateral institutional framework in regards to environmental cooperation and funding for regional infrastructure development. However, these institutions are ridden by inefficiency in their prolific capacity since they lack institutional autonomy, authority

---

34 Ibid, 61.
and legitimacy.\textsuperscript{36} The North American Agreement on Environmental Cooperation (NAAEC) as well as the North American Development Bank (NADBank) were created to fund and manage regional projects in order to enable further regional economic integration between member-states.

NADbank’s role is to provide “managerial assistance, direct loans, and loan guarantees that facilitate additional project finance from other lenders of NAAEC-certified environment infrastructure projects.”\textsuperscript{37} Since December 2004, NADbank has approved $697 million in loans and grants for 85 projects at an expected cost of $2.3 billion. Project funding and management has not led to efficient outcomes.\textsuperscript{38} The amounts of funding that can be expended under NADbank are limited, while the rates at which the loans are given in comparison to other regional financial institutions have been uncompetitive. The difficulty in the NAAEC is that there is a non-reinforcement mechanism “contained in Article 22-36” of the NAFTA agreement. Hence, member-states are not compelled to abide by the political agenda set forth by the environmental commission since the terms of the agreement are not enforceable.

The Commission for Environmental Cooperation (CEC) has not been provided a clear mandate since “political leaders do not have reliable targets to shoot at.” The environmental commission has failed to receive a focused agenda from state leaders while funding has been limited to 9 million dollars annually.\textsuperscript{39} The CEC has fallen short of accomplishing the organizations’ mandate in assessing and implementing environmental standards for cross border trade. If the CEC and NADbank retained a clear mandate and greater institutional reinforcement


\textsuperscript{37} Hufbauer and Schott, \textit{NAFTA Revisited}, 175.

\textsuperscript{38} Ibid, 176.

\textsuperscript{39} Ibid, 178.
capabilities in their quests to promote regional infrastructure development, energy security integration between member-states would become more resilient. Energy security and sustainable development go ‘hand in hand,’ requiring member-states to coordinate regional environmental policies leading to infrastructure development through adequate project funding.

Deepening regional energy security integration under North American regionalism is impeded by multi-level jurisdictional authority that retains no institutional permanence since they are missing a clear mandate in their administrative roles. Furthermore, under NAFTA’s institutional arrangement, member-states are impeded from communicating their energy security concerns in an official tri-lateral forum since political incentives remain absent within the core of the agreements’ regulatory dispositions. Institutional weakness combined with the agreement privileging market actor interests over government participation within the regional economy accentuates asymmetries between member-states delaying the deepening of energy security under North American regionalism. As a result, distrust permeates the structural relationship between member-states since national-sovereignty is being replaced by market sovereignty.

NAFTA was sold on the principle that the agreement was “between equal partners”; however the agreement inhibits composure since an asymmetric relationship between member-states subsists under NAFTA’s regulatory scheme. Since market forces are prioritized over the utilization of political influence, member-states have sought to protect their sovereignty from NAFTA’s free-market principles. Consequently, energy security under NAFTA has not been met with high levels of integration because the structural relationship between member-states is based on an environment of distrust.

Member-states have sought to protect their national-sovereignty by excluding nationally-sensitive economic industries from the agreements authoritative jurisdiction. As a precondition
for full membership under NAFTA, Mexico demanded that the energy sector be protected from foreign investment under NAFTA Annex III Section B. In essence, property rights under Article 27 of the Mexican constitution conflict with NAFTA based regulation under chapter 11 and NAFTA chapter 6 energy provisions. Under chapter 11 article 1110, “no Party may directly or indirectly nationalize or expropriate an investment of an investor of another party in its territory.” Under Article 27 of the 1917 Mexican Constitution, “land remains the property of the state whereas expropriation is a vested national right.” Hence, NAFTA’s regulatory provisions based on prioritizing market forces over nation-state interests have come into conflict with member-state national sovereignty generating distrust between member-states restraining the expansion of energy security onto the regional stage.

Regional identity under NAFTA is construed around U.S. cultural dominance over the agreement. The narrowly defined nature of the agreement based on promoting free-market corporate interests over government participation within the institutional outlay of NAFTA has prevented the formation of a sense of belonging and trust between member-states. The United States retains a regional hegemonic position vis-à-vis neighbouring countries. Hence, “hemispheric integration is organized around US state interests and perspectives “…where rules are imbued with U.S….preferences.” The United States hegemonic regional position has prevented the deepening of energy security under North American regionalism.

The United States has shown limited interest in harmonizing the country’s legal system with other member-states. The United States led the NAFTA project; accordingly, the nature of

41 Ibid, 348.
NAFTA’s regulatory arrangement is confected with an ideology that is governed by U.S. cultural norms and ideals. U.S. cultural and idealistic norms are confected around the promotion of free-market principles. NAFTA “…does not necessarily speak with one voice, because it lacks institutions and because the United States has a penchant for unilateralism at a global level (stage).” U.S. dominance over the region is demonstrated by trade flows between member-states in the form of FDI. Between 1990 and 2000, U.S. FDI in Canada and Mexico increased from 69.5 billion dollars to 126.4 billion dollars. U.S. FDI in Mexico more than tripled “from 10.3 billion dollars to 35.4 billion dollars.” Canada has been a “capital importer” where U.S. investment in Canada dominates the landscape. U.S. FDI in Canada has increased “2.2 times from 84 billion Canadian dollars in 1990 to 186.2 billion Canadian dollars in 2000.” FDI has integrated the regional economies of all three countries while U.S. dominance over the regional market economy has characterized trade flows between countries. Asymmetry dominated the context of nation-state interactions under NAFTA.

The asymmetrical relationship between member-states impedes upon solidifying an integrative relationship between member-states where mutual recognition and identification is instilled in an efficient modus operandi of energy security integration. Instead, distrust permeates the structural regional environment between member-states. NAFTA lacks an institutionalized environment where nation-states can efficiently communicate their energy security concerns leading to member-states being enabled in coordinating their common energy security initiatives. The diffusion of authority from state actors to transstate authority under NAFTA generates

48 Ibid, 7.
variance and detachment in the formulation of common policy initiatives between member-states.

A North-South divide exists under NAFTA regionalism where a cleavage in economic and social development subsists between Mexico and the country’s Northern neighbours. Mexico is the 9th largest oil producer in the world; however the country’s energy sector is laden in inefficient outcomes. Although according to the Organization for Economic Co-operation and Development has stipulated that Mexican GDP has grown at an annual rate of 2.7%, Mexico’s potential growth between 1994 and 2003 was determined at 6%. NADbank has argued that Mexico would need “$20 billion a year for the next 10 years just to close the country’s widening infrastructure gap.” While trade and investment has benefited all member-states under the agreement, there remains a developmental imbalance between Mexico and the rest of the Northern hemisphere.

Cleavages exist between the North and South since NAFTA is not equipped with the institutional capacity to coordinate educational, social and economic resources in order to appease the asymmetry that subsists between member-states. The principle downfall that characterizes NAFTA regionalism is the lack of economic and social infrastructure convergence between Mexico and the country’s northern neighbours. Energy infrastructure in Mexico lacks investment, and therefore lags behind Northern neighbours in terms of economic growth. While Canada and the United States have maintained a historic interdependent relationship “reflecting not just deep integration but considerable ideological compatibility,” Mexico has had a rather

50 Robert A. Pastor, Toward a North American Community, 136.
turbulent relationship with the United States where the question of national sovereignty has come into play with regards to wars fought in the name of national sovereignty. While Canadian and U.S. political systems have retained a democratic political legacy, Mexico’s political institutional heritage has been founded on the principles of authoritarian governance making it so much more difficult to presently integrate the regional economy under NAFTA regionalism.

III. Energy Security under NAFTA

Energy trade under NAFTA is regulated under chapter 6 of the agreement. NAFTA is based on a unidirectional policy initiative emphasizing the need to guarantee the consolidation of energy supply networks between member-states through the process of free-market liberalization. NAFTA obliges member-states to open their national energy markets to regional trade. Hence, national restrictions on energy exports are perceived as obstructions to the agreement’s provisions where litigation against uncooperative state actors is conveyed in front of NAFTA’s ad hoc tribunals. NAFTA energy chapter 6 is based on promoting energy supply integration between member-states.

Chapter 6 avoids addressing energy security matters that require government interventionism within the energy sector. For instance, chapter 6 relegates policy intensive issues such as energy infrastructure development and sustainable development under national authority. Chapter 6 sets “general market-based objectives,” without being receptive towards national market needs. Regionally-set objectives obstruct national energy policy initiatives. To a certain extent, chapter 6 undermines national sovereignty since the provisions “diminish domestic policy
flexibility.” Mexico has been reluctant to liberalize its energy market to foreign direct investment since chapter 6 denies nation-states’ ability to control their energy reserves in the face of growing energy prices and resource depletion. Absent from chapter 6 energy provisions is an energy security plan where member states can play an active role in macro-managing the regional energy market resulting in counterbalancing unstable world oil market prices. Energy security integration requires additional incentives in generating greater efficiency in the regional energy sector than simply relying on the security of energy supply.

NAFTA delineates the rules of energy trade between member-states under chapter 6 articles 601 to 608. Energy security under chapter 6 is defined through the principles of free-market liberalism. Chapter 6 adopts General Agreement on Tariffs and Trade (GATT) rules concerning energy trade between member states, whereas free-market norms are made evident in that the agreement prohibits member-states to position national standards to trade such as the use of export taxes. However, NAFTA has introduced certain exceptions to the rule. Nation-states can restrict energy trade under certain conditions. Under certain exceptional circumstances member-states can utilize the idea of national security to justify energy import or export restrictions. The United States utilized the exception when the country decided to unilaterally close its borders to free-trade with Canada and Mexico following the terrorist attacks on September 11th 2001. Hence, chapter 6 grants certain leverage for member-states to control their national non-renewable energy resources from NAFTA’s free trade provisions.

Articles 601 to 608 establish the main guidelines to energy trade under NAFTA. Under article 601, the general guidelines for energy trade under NAFTA are stipulated through the preambles’ declaratory principles. The objective of energy trade under chapter 6 is that NAFTA member-states “through sustained and gradual liberalization” open their energy markets to free-market investment and energy-supply liberalization. Under article 602, chapter 6 defines what constitutes “energy and petrochemical goods.” A list of qualified non-renewable energies is listed under article 602 while excluding non-renewable energy as a form of energy under regional trade. By excluding renewable energy from the energy definitional criteria, the agreement makes evident that regional energy security does not qualify sustainable development as an option towards greater regional energy security integration.

Under articles 603 and 604, basic rights and obligations governing trade in energy and petrochemicals are elaborated upon. For instance, under article 603 member-states have an obligation to not apply restrictions to energy trade. Hence, member-states cannot apply national standards with regards to energy conservation safeguards. Under chapter 604, nation-states cannot apply nation-specific export taxes. Articles 603 and 604 underline the importance of regionalizing energy security by consolidating energy supply networks between member-states. Regional energy security under NAFTA implies opening energy trade to free market principles.

Chapter 6 provides member-states the possibility to opt out from certain NAFTA energy policy initiatives for reasons of national emergency. Article 605 provides exceptions to the application of article 603 and 604. Member-states can restrict energy exports to other member-states if it concerns the “protection of human, animal or plant life or health, protection of essential security interests, and circumstances of short supply, price stabilization, and resource
conservation.” Under article 606, the provision emphasizes that the chapters’ obligation applies to both levels of government. NAFTA’s regulatory provisions are applicable at the federal, provincial as well as the state local level. Article 607 enumerates further exceptions that member-states can utilize to limit free-market movement of energy across borders. Under the circumstance where military and national security defense comes into question, a member-state can limit energy imports and exports across borders such as was present during the 9/11 incident.

Multi-level governance becomes evident under chapter 6 article 608. Article 608, “reaffirms a parties ability to provide incentives in the oil and gas sector in order to maintain the reserve base” meaning that chapter 6 adopts international standards in the application of sustainable development. Member-states pledge to uphold energy reserve standards stipulated under the International Energy Program (IEP) in the event that there are “inconsistencies between the IEP and the circumstances to energy conservation under article 605.” The IEP establishes energy conservation standards for all member-states. The organization was created as a response to the oil price shocks during the early to mid 1970’s.

Under Chapter 6 annex 602.3, Mexico has excluded itself from the provisions, while under annex 603.6 Mexico provides “exceptions to the chapter’s general obligations on the use of import and export restrictions, as required under the Mexican Constitution.” Mexico has been an ambivalent participant in NAFTA’s energy free-trade regulations. Since there is no regional plan towards the macro-management of energy security while policy intensive energy issues are relegated at the international or national government level, member-states are reluctant to participate in an energy plan based strictly on securing regional energy supply networks because the provisions impinge upon nation-state sovereignty.

55 Ibid.
56 Ibid.
To a certain extent, chapter 6 undermines national sovereignty while “diminishing domestic policy flexibility.” Chapter 6 has not provided for an elaborated energy security plan based on the active role of nation-states in the macro-management of the regional energy sector such that regional energy efficiency results in counterbalancing unstable world oil market prices. Regional energy security integration cannot simply rely on the security of energy supply in order to generate efficiency in energy supply networks between member-states. A coordinated effort by member-states is required in generating energy supply efficiency through the initiation of programs based sustainable development and infrastructure development.

The idea of energy security under NAFTA is based on the security of energy supply between member-states avoiding sustainable development as a means towards greater energy security integration. NAFTA’s energy provisions have left policy intensive energy security issues to be relegated onto the jurisdiction of nation-state governments or international agencies. Hence, member-states are discouraged from harmonizing their energy security interests under NAFTA’s energy provisions. The obligation that member-states open their energy markets to regional free trade can be interpreted as a partial effort at regionalizing energy security under North American regionalism.

**IV. Member-State Energy Policies**

*Collective Member-States Energy Consumption Patterns*

NAFTA’s energy market shows signs of interdependence. The United States is the dominant regional energy demander, while Mexico and Canada are energy suppliers to the U.S. market. Because of regional proximity and political stability in both countries, Mexico and

---

Canada represent the U.S. primary oil suppliers. Therefore, “since the share in energy trade between Mexico and Canada is very small, the focus will be on their trade with the United States.”

The United States presently imports 40% of the country’s oil supplies from Canada, Mexico, Saudi Arabia and Venezuela. Furthermore, “the United States accounts for almost a quarter of the world’s energy consumption, and the share for North America as a whole 29%.”

Energy consumption for all member states in 2002 was 117 quadrillion thermal units (BTU’s) whereas U.S. consumption represented 83.7% of this total energy consumption, Canada 11.1% and Mexico 5.9%. Member-states’ demand for energy is expected to grow exponentially. North America consumes “18% more energy than it produces.” Therefore, the security of energy supply can only partially remedy member-states’ regional energy security requirements.

Member-states need to introduce programs based on sustainable development and infrastructure development in order to maintain less dependence on world energy market price volatility.

While oil represents the most important regional energy trade commodity, other non-renewable energies play a significant role in the security of energy supply under NAFTA. The United States imports more oil than it produces domestically, representing 83% of North American oil consumption. The U.S. market represents the largest North American natural gas demander and supplier. The U.S. represents 71% of natural gas production within the North American market. Canada produces more natural gas than the country consumes while most of the production is directed towards the U.S. market. Mexico produces very little gas and is a net

---

59 Ibid, 418.
60 Ibid, 412.
61 Ibid, 407.
63 Ibid, 407.
64 Ibid, 407.
importer of natural gas because of infrastructure inefficiency within the country.\textsuperscript{65} Coal is the only natural resource where the United States retains self-sufficiency in fulfilling national consumption needs. Within the North American energy market, Mexico is the only coal importer. The United States is the largest consumer of energy; however electricity imports from Mexico and Canada only represent 1\% of the country’s “total electricity consumption.” Canada is a net-exporter of electricity to the United States. Furthermore, Canada seeks to increase trade in electricity with U.S. trade partners.\textsuperscript{66} Mexico is faced with an ever-increasing demand for electricity, while electricity infrastructure development in the country is ridden by inefficiency. Mexico is a net importer of electricity from the U.S.\textsuperscript{67} Interdependence characterizes regional energy trade; however member-states simultaneously face energy security dilemmas.

National energy security dilemmas preclude the deepening of energy trade under NAFTA’s energy provisions based on the security of energy supply. With respect to supply markets, “Mexico has large reserves but actually produces little more oil than Canada and much less than the United States reflecting the underachievement of Mexico in exploiting its own oil resources.”\textsuperscript{68} While energy trade between member-states has increased because of NAFTA, energy market integration has not reached desired levels since “trade is well short of levels that would confer maximum mutual benefits on the NAFTA partners.”\textsuperscript{69} While the United States is the largest consumer of energy within the North American economy, the country encounters difficulty in meeting a growing national demand for energy.

\textsuperscript{65} Ibid, 408.
\textsuperscript{66} Ibid, 408.
\textsuperscript{68} Hufbauer and Scott, \textit{NAFTA Revisited}, 407.
\textsuperscript{69} Ibid, 409-410.
All three member-states under NAFTA are preoccupied with concerns over securing energy supplies for their markets. Domestic demand for energy is growing while non-renewable energy supply networks are becoming increasingly difficult to consolidate. With the coming of NAFTA, economic trade between the three member-states has considerably increased. However, energy trade between NAFTA members has not led to optimal levels of integration. NAFTA member-states have common interests in improving energy security within their borders through the adoption of programs oriented towards sustainable development and regional infrastructure development. The exponential growth of world energy prices in the last few years combined with potential energy shocks present a risk of having devastating effects on the national economies of oil-dependent countries.

**United States**

*Consumption Pattern:*

The U.S. dominant role in the North American energy market is demonstrated by the country’s energy consumption patterns. The United States embodies an energy market where the country maintains a large energy deficit that overwhelms relatively small surpluses. Energy supply cannot keep up with energy demand in the U.S. As an important energy demander within the North American energy market, the United States needs to import large amounts of energy in order to cater to the country’s increasing domestic energy consumption needs. The U.S. is an energy security demander since the country consumes over 20 million barrels of oil a day. Accordingly, the United States proven oil reserves declined to a little more than 21 gigabarrels

---

by the end of 2004 according to the Energy Information Administration, a 46% decline from the 39 gigabars in 1970. The United States imports over 50% of the country’s petroleum and natural gas from foreign sources. It is estimated that the United States has used 99,320 trillion British thermal units of energy by the year 2000 representing 24.9% of the world’s energy consumption.71 Petroleum represents the “key fuel for U.S. energy.”72 From 1960 to 2000, U.S. petroleum consumption has more than doubled.73 Securing energy supply networks towards the national market is becoming increasingly difficult since national demand for energy is escalating, precipitating a nation wide energy security dilemma.

While the United States is one of the principle world oil producers, the country’s position as primary world oil producer is diminishing because of resource depletion. For instance, in 1960 the United States produced 7,035,000 barrels daily (bbl/d), rising to 8,597,000 bbl/d in 1980, however by the year 2001 production had declined to 5,853,000 bbl/d.74 The United States is dependent on foreign petroleum imports since the country is no longer self sufficient in petroleum energy. In 1960, the United States only imported 1,185,000 bbl of energy from foreign sources, while by the year 2001 imports had leaped to 11,619,000 bbl.75 The United States presently imports more than 52% of its petroleum from the Organization of the Petroleum Exporting Countries (OPEC) and non-OPEC countries. By 2020, projections of U.S. oil imports from foreign countries will exceed 64%.76 While the United States is the largest energy consumer within the North American economy, the country is having difficulty in satisfying domestic market demand for energy as world energy prices continue to climb.

72 Zillman and Bilos, Security of Supply, 148.
73 Ibid, 147.
74 Ibid, 148.
75 Ibid, 149.
76 Ibid, 149.
The United States is becoming increasingly reliant on foreign petroleum imports to feed the country’s increasing national energy consumption needs, while national energy reserves are in decline in face of growing world energy prices. The U.S. faces a problem of energy over consumption.\textsuperscript{77} Energy consumption in the U.S. is projected to increase by 32\% by 2020.\textsuperscript{78} U.S. energy consumption behaviours establish the country’s national energy policy. The United States represents “a quarter of world energy consumption.”\textsuperscript{79} In order to reduce reliance upon increasing world energy prices, the U.S. is seeking to diversify the country’s energy supply networks. Among solutions considered by the U.S. Energy Administration is the implementation of sustainable development as a viable policy objective in order to shield the domestic economy from world energy price volatility.

\textit{Energy Policy:}

Faced with increasing world energy prices and national oil reserve depletion, NAFTA’s chapter 6 energy provisions based on the security of energy supply are not resolving the worsening U.S. energy security dilemma. The U.S. energy policy oriented towards free-market principles has come short of providing the country with national energy security in face of increasing world energy prices.

The United States energy policy has been colored with periods of protectionist outbursts eventually settling with an energy policy based on free market principles.\textsuperscript{80} Following the 1973-74 oil shocks, the United States sought to “achieve energy independence by 1980.”\textsuperscript{81}

\begin{footnotesize}
\begin{enumerate}
\item Hufbauer and Schott, \textit{NAFTA Revisited}, 396.
\item Ibid, 398.
\item Ibid.
\end{enumerate}
\end{footnotesize}
Subsequently, under President Jimmy Carter, the government created the U.S. Department of Energy (DOE) to look over U.S. energy needs. Under the Carter government, the U.S. implemented “price controls and quantitative limits” in order “to reduce energy consumption, promote energy efficiency, and expand domestic production.” However, U.S. interventionism within the energy sector eventually dissipated. Under the Reagan government began an era of free-market liberalism where the “government took a hands-off attitude toward energy market liberalization. States were allowed more room to determine their own energy initiatives.” Hence, free-market norms became indoctrinated in the U.S. external energy policy initiatives.

After the September 11, 2001 terrorist attacks, the United States responded by seeking to redirect the country’s energy policy away from dependence upon oil reserves from the Persian Gulf. The U.S. seeks to diversify energy imports away from the international energy market, preferring to regionalize energy supply networks. Estimates are that it has cost the U.S. economy an estimated $7 trillion from world energy price volatility. U.S. energy policy is oriented towards diversifying the country’s energy supply portfolio. The U.S. seeks to regionalize energy security interests while paying close attention to sustainable development as an alternative energy resource as the country faces increasing world energy prices.

**Canada**

*Consumption Pattern:*

---

82 Ibid, 399.
83 Ibid, 399.
Canada is an energy security provider to the North American energy market. Canada is the most reliable energy provider in the Northern hemisphere.\textsuperscript{85} Canada is a “resource-intensive and export-oriented industry accounting for a larger part of the country’s economic performance.”\textsuperscript{86} Approximately 97% of all energy is exported to the United States.\textsuperscript{87} Canada’s energy security scheme is based on the ‘security of demand.’\textsuperscript{88} Hence, Canada exploits the country’s energy reserves in order to fulfill U.S. demand for energy. Policy initiatives oriented towards safeguarding the country’s non-renewable energy from over-exploitation remain non-existent under Canada’s legislative energy program.

Canadian interest groups have become increasingly concerned about overwhelming American foreign investment within the country’s energy sector potentially having an effect on the country’s national sovereignty.\textsuperscript{89} This concern is justified when “Canada has no specific energy security policy and there is no legislation that explicitly addresses energy security.”\textsuperscript{90} Needless to say that Canada’s energy reserves are not unlimited. Natural gas exports to the United States are projected to increase to 4.6-5 trillion cubic feet by 2012-2018, and then marketable production is supposed to decline to 3.3-4.5 trillion cubic feet. Canada’s oil reserves are portrayed as being a “mature production basin…the remaining Western Canada Sedimentary

\textsuperscript{85} Annette Hester, « La géopolitique de l’énergie dans les Amériques, » lecture in conjunctures to the Conférence sur la coopération dans les Amériques : l’École internationale d’été sur les Amériques, (Université de Laval, Québec, Mai 19, 2006).
\textsuperscript{88} Lucas, Canada’s Voluntary, 171.
\textsuperscript{90} Lucas, Canada’s Voluntary, 182.
Basin established reserves are in decline.”91 Since Canada’s energy reserves are not unlimited, greater emphasis needs to be applied towards policies aimed at encouraging the implementation of sustainable development as a strategy to preserve non-renewable energy reserves for future generations.

*Energy Policy:*

Like the U.S., Canada’s energy policy has progressively evolved from a period of protectionism towards free market principles. In 1980, Canada initiated a program called the National Energy Program (NEP) where the idea of national “energy independence” was promoted and applied. Under the program, the government prevented foreign investment within the Canadian oil industry while demanding that foreign investors sell their companies to nationally-based corporations. Furthermore, the NEP “put price ceilings on oil and natural gas and subsidized oil exploration based on how much of the operation was owned by Canadians.”92 In 1984, when the Conservative Party came to power, an energy policy based on protectionist policy initiatives quickly turned to a strategy based on opening the energy market to international investment. Suddenly, Canada’s energy policy was based on free market principles.93 Canada and the United States have similar energy policy objectives since they are both oriented towards free-market liberalism. Like the United States, Canada has paid increasing attention towards adopting sustainable development as a strategy towards appeasing the potential overexploitation of the country’s non-renewable energies.

Canada’s provincial mosaic causes additional obstacles in the pursuit to strengthen national energy security since every province has individual energy policy guidelines. Canadian

---

92 Hufbauer and Schott, *NAFTA Revisited*, 397.
93 Ibid, 398.
provinces own the natural resources on their territory. In comparison, U.S. land and natural resources can be extracted from the ground as privately owned enterprises.\textsuperscript{94} States wield less power with respect to influencing federal state energy policy initiatives.\textsuperscript{95} Canadian sovereignty over non-renewable energy is being affected since the federal government does not have an authoritative stronghold over the production and distribution of the country’s non-renewable energy.

**Mexico**

*Consumption Pattern:*

Mexico is the 9\textsuperscript{th} largest producer of petroleum; however energy security in the country is based on inefficient outcomes. There is a lack of diversity within the country’s energy supply distribution networks since Mexico’s energy sector is a state owner monopoly that is besieged in inefficient management practices while “market forces have a limited role in the security of energy supply” in Mexico.\textsuperscript{96} Within this context, energy demand is being met with insufficient energy supplies since “Mexico’s annual demand for oil in physical terms is projected to grow about three times faster from 2001 to 2025 than from 1990 to 2001.”\textsuperscript{97} Mexico must increase the country’s resource extraction capabilities in order to supply a rising national demand for energy. Hence, Mexico needs to “substantially increase both its proven reserves and production capabilities just to meet the country’s own demand for energy, much less to continue to supply the United States with 1.4 million barrels per day of profitable oil exports.”\textsuperscript{98} According to the

\textsuperscript{94} Ibid, 400-401.  
\textsuperscript{95} Ibid, 401.  
\textsuperscript{97} Hufbauer and Schott, *NAFTA Revisited*, 413.  
\textsuperscript{98} Ibid, 413.
Mexican Sectoral Program of Energy from 2001 to 2006, the inefficient outcomes emerging from the country’s inability to proficiently extract national non-renewable resources is being substituted by oil and petroleum imports from the United States even though Mexico possesses sufficient energy reserves to supply a rising national demand for energy.\(^9^9\) Hence, energy infrastructure development within the country is ridden in inefficient outcomes creating a national energy security dilemma.

*Energy Policy:*

Mexico’s energy policy since the end of the 1980’s through the 1990’s has been oriented towards opening the country’s energy sector towards a certain level of free market movement. In 1995, the government agreed to open the natural gas sector to foreign investment with regard to transportation and storage operations. Mexico’s confirmed oil reserves are projected to last 13 years.\(^1^0^0\) Mexico is believed to have considerable unproven offshore petroleum reserves. However, as long as drilling operations remain under state authority, Mexico will be unable to explore potential new sources of energy since the state owned energy sector is under funded.

The oil industry has remained more tightly regulated by the government than the electricity and gas sectors.\(^1^0^1\) The partial opening of Mexico’s energy sector to foreign interests is based on the premise that “foreign companies can contract their services to PEMEX” for the “exploration and extraction of oil reserves,” however foreign companies are prevented from becoming owners of the oil they extract since ownership of natural resources remain under state jurisdiction.\(^1^0^2\) The country’s oil reserves are established at 28.3 billion barrels while potential oil

---

\(^1^0^0\) Hufbauer and Schott, *NAFTA Revisited*, 413.
\(^1^0^1\) Ibid, 404.
\(^1^0^2\) Ibid, 404.
reserves are estimated at 50 billion barrels. Hence, Mexico has the potential of becoming an important regional energy supplier contributing in deepening North American energy security.

Mexico is presently faced with a national energy security dilemma because the national energy industry is ridden in inefficient outcomes. In order to attain reasonable levels of energy security, Mexico must restructure publicly owned industries. To attain reasonable levels of energy security at the national level, Mexico needs to generate greater efficiency in the national energy company’s extractive, productive and distributive capabilities. There is a need for greater investment within the country’s energy industry while Mexico continues to struggle in fulfilling an increasing national demand for energy.

In order to deal with the country’s inefficient energy security outcomes, Mexico is faced with two strategic outcomes. Either Mexico seeks to privatize and deregulate energy sector activities or the country pursues a restructuring plan funded by the national government with regard to PEMEX. Economic growth in Mexico’s energy sector has been made vulnerable by “constant budgetary constraints over the past two decades.” To remedy these problems, Mexico needs to find ways of opening the country’s energy sector to foreign investment without losing control over its nationalized energy industries. The government-owned energy industries generate inefficiency in the allocation of energy supplies to the national market.

With regard to the energy sector, property rights take central stage in Mexico’s governing strategies. Mexican property rights are nationalized, meaning that the petroleum industry is a

---

105 Hidalgo and Perez, Mexican Energy Sector, 58.
state-owned monopoly.\textsuperscript{106} With the advent of the Mexican revolution, the state sought to play an active role in the country’s social development through the creation of an interventionist institutional model of governance.\textsuperscript{107} On June 7\textsuperscript{th} 1938, Petroleos Mexicanos (PEMEX) was created, a state-owned company that manages the national production and distribution of oil.\textsuperscript{108} Government companies were formed with the objective of playing an important role in the equitable distribution of capital gains towards social development. Mexico’s historical memory has led the country to adopt an institutional arrangement based on government interventionism within the energy sector. Mexico’s energy policy based on government interventionism within the energy market differs from the United States and Canada’s free-market oriented energy policies. Mexico’s system of governance has come into conflict with NAFTA’s free-market principles. NAFTA’s energy provisions based on the security of energy supply have conflicted with Mexico’s interventionist model of governance.

Among all member-states, by the year 2025, Mexico will have the most difficulty supplying energy resources to a rising national energy consumer market. Mexico’s national petroleum company PEMEX is ridden in inefficient outcomes with regard to energy production and distribution capacity. Mexico’s state-owned energy companies have difficulty producing and distributing energy supplies to national markets. Mexico does not have the investment capability to drill and explore new potential petroleum reserves while the country is believed to be endowed with considerable energy reserves. Mexico needs to open its national energy market to foreign investment in order to meet domestic and U.S. demand for energy. However, as long as

\textsuperscript{106} Angel de la Vega Navarro, « La evolucion del componente petrolero en el desarrollo y la transicion de Mexico desarrollo y transicion de Mexico, » (PhD diss. Grenoble University II, January 1998), 55.
\textsuperscript{107} Angel de la Vega Navarro, La evolucion, 56.
\textsuperscript{108} Ibid, 76.
distrust permeates the relationship between member-states under NAFTA, Mexico will remain reluctant to open the country’s petroleum industry to foreign investment.

V. Energy Security and Identity

Member-state energy markets are interdependent and therefore member-states have an interest in coordinating their energy policy interests under NAFTA. All three member-states under NAFTA seek to secure energy supplies for their respective markets as they face an increasing national energy security dilemma. However, NAFTA has not provided member-states with the incentive to coordinate their energy security policy interests at the regional level. Instead, because of the asymmetric nature of the agreement, NAFTA has encouraged an environment of distrust to develop between member-states preventing the deepening of regional energy security integration. NAFTA’s regulatory provisions based on free-market principles come short from generating efficient outcomes in energy supply management between member-states. However, such initiatives require that a process of institution-building take place under NAFTA leading to collective identity formation between member-states with regard to the idea of energy security.

Under NAFTA, energy security remains nation-state specific because economic issues of political significance are relegated away from the core of the agreements’ dispositions. Consequently, energy security under NAFTA is characterized by weak integration. Member-state interactions within the regionalized context of NAFTA are based on a relationship between agent (nation-state) and structure (RTA). Structures influence member-states interactions between one another. Structures have two effects: constitutive and causal.109 The constitutive effect of NAFTA creates an environment where market investor interests are prioritized over government

109 Wendt, Social Theory, 217.
participation within the market-economy. The causal effect of NAFTA creates asymmetry in member-state interactions generating distrust in member-state relations since ‘economic governance’ dominates intergovernmental relations under NAFTA. Consequently, member-states are prevented as well as reluctant to coordinate their energy security policy interests under NAFTA.

In order to deepen North American energy security integration, NAFTA’s institutional outlay needs to be strengthened. The process of institution-building leads to member-states being provided the incentive to coordinate their energy security interests under the agreement. In order for member-states to coordinate their energy security interests under NAFTA, the process of collective identity formation with regard to the idea of energy security needs to take place. Collective identity formation requires that member-states retain a common ideology with respect to the idea of energy security. The idea of energy security signifies more than the security of energy supply, implying the initiation of programs based on sustainable development and infrastructure development. Hence, there is a need for a ‘cognitive evolution’ where shared learning between member-states becomes internalized within the *modus operandi* of energy security.\(^{110}\) Member-states maintain interdependent energy markets, while their energy policy interests are skewed towards deepening regional energy security. These features are practicalities that suggest member-states deepen energy security under NAFTA. Institution-building with regard to the idea of energy security leads to member-states indoctrinating a common culture with regard to the idea of energy security.

The process of consolidating a common regional culture with regard to the idea of energy security involves member-states ability to recognize that government interventionism within the

energy sector is required in order to deepen energy security integration under North American regionalism. Deepening energy security under North American regionalism requires that member-states identify themselves to a larger regional collective whereas a common idea with regard to energy security is internalized within the cultural dynamics of member-state national identities.

NAFTA was a state-led initiative representing member-states common interests at regionalizing their market economies. As a result, member-states moulded part of their national identities towards a larger regional cooperative, and therefore passed to the act of opening their borders to free-trade. Hence, a new “conceptualization of sovereignty, security, and identity was generated that would reconcile nationalist sentiments with globalization aspirations.” Member-states decided to merge their identity in the construction of NAFTA thus giving up part of their national identity towards greater regional economic integration. Member-states have adopted free-trade within the cultural outlay of their identity. Hence, in order for member-states to regionalize their energy security interests’, political leaders of the three member-states initiated the first steps towards deepening economic integration under NAFTA. Through intergovernmental negotiations, member-states finally institutionalized their common economic interests under NAFTA where the idea of free trade was internalized within the national cultural outlay of member-state identities.

Deepening energy security integration under North American regionalism requires member-states to identify themselves as part of a regional ensemble. Member-states ability to communicate their energy security interests within a strengthened organizational forum which has institutional autonomy, authority and legitimacy enhances member-states’ ability to structure a regional relationship based on trust leading to collective identity formation with regard to the

111 Golob, Beyond the Policy Frontier, 363.
idea of energy security. NAFTA lacks institutional autonomy and authority in the organization’s capacity to act upon member-states energy security policy interests and apply them at the regional level. Politically intensive economic trade issues of interest between member-states are relegated away from the core of the agreement’s jurisdictional authority. Furthermore, multi-level governance does not provide member-states with the ability to harmonize and coordinate their common energy security interests under NAFTA.

Member-states require the ability to identify themselves as being part of an energy security regional group called “we.” The development of regional social or collective identity provides member-states with the incentive to further integrate their energy security needs under NAFTA. However, NAFTA dilutes member-states’ ability at collective identity formation with regard to energy security since market forces are prioritized over state-crafting under the agreement’s regulatory and institutional dispositions. As a result, deepening energy security integration under NAFTA encounters difficulties.

Identity plays a crucial role in the process of member-states willing to negotiate their economic and political interests at the regional level. During the pre-negotiation phase leading to the adoption of NAFTA, identity occupied an important role in the process leading to NAFTA being ratified by all member-states. During the crucial pre-negotiation stage of the agreement, member-states not only had to negotiate between themselves, but they had to convince their populations that the agreement would positively benefit society’s best interests. Hence,
identity had to be skewed towards cultural norms that would become accepted by the national populations of potential NAFTA member-states.

Technically, NAFTA is an agreement between equal partners. However, NAFTA identity adopts U.S cultural norms since the agreement is based on the promotion of free-market principles. During the U.S. campaign leading to the ratification of the agreement by congress, pro-NAFTA lobby groups manipulated the image identity of NAFTA to reflect U.S. cultural dominance over the agreement. The American public finally came to accept the agreement since NAFTA identity was projected by pro-NAFTA lobby groups as portraying U.S. supremacy over the agreement. Mexico finally became accepted as an ‘equal’ partner since the U.S. was viewed as owning center stage within the agreement. In November 1993, U.S. Congress finally accepted and approved NAFTA since pro-NAFTA lobby groups were successful in manipulating NAFTA imagery as one favouring the “construction privileging traditional, dominant American myths” as a symbol projected upon the construct of NAFTA identity. NAFTA came to existence because the agreement became a synonym of the representative symbol of American leadership. Hence, “NAFTA was transformed from a trade accord between three countries into a symbol of contested U.S. identity.”115 An element of trust played an important role in the pre-negotiation stage of the NAFTA agreement.

While Mexico is technically an equal partner under NAFTA, Mexico has the weakest economy among member-states and therefore could not measure up in equality to the North. Differences between the developing South and the developed North create divergence in how member-states observe the ‘Self’ in comparison to the ‘Other.’ Mexico’s reluctance to deepen energy integration within the context of NAFTA is based on historical memory.

Conflict and confrontation has marked Mexico’s historical memory with regard to the country’s experience with foreign investment leading to the Mexican revolution and proceeding with the nationalization of the country’s non-renewable energy. Mexico’s identity structure is based on “images, colors, heroes, narratives, institutions, and symbols of the so-called Mexican Revolution.” Consequently, the outcome has produced a culture of distrust within the dynamic of ‘Us’ Mexico versus the ‘Other’ United States. Distrust characterizes the relationship between the United States and Mexico. Because member-states do not retain an institutionalized context where member-states are enabled in communicating their energy security concerns on equal terms, distrust permeates the relationship between member states precluding greater energy security integration under NAFTA.

During the initial negotiations leading to the foundation of NAFTA, the American public perceived Mexico as an “inferior, childlike, dependent, and suspicious” trade partner. Furthermore, Mexico was depicted as a “low wage, socially troubled, environmentally polluted country that exports illegal aliens to the United States.” Hence, the American public had difficulty accepting Mexico as an equal partner. Mexico’s negative image was obscured through the construction of U.S. dominance over the accord.

The U.S. cultural hegemonic role over the agreement becomes evident by the manipulation of identity imagery. This is demonstrated through the “public discourses…socially constructed NAFTA as an extension of the American Dream as a tool for U.S. leadership.” Pro-NAFTA lobby groups sought to manipulate NAFTA’s image as one where the United States

---

118 Skonieczny, Constructing, 450-451.
119 Ibid, 435.
dominated the agreement while Mexico’s image as well as its equal status membership within NAFTA was downplayed.120 Pro-NAFTA lobby groups ‘sold’ NAFTA by manipulating identity imagery and fashioning NAFTA as an indoctrination of American historical cultural norms based on the “American Dream, American Exceptionalism and Populism.” The American Dream myth “embodies the belief that America is the source of human progress and can achieve perfection as a society.”121 The myth of American Exceptionalism represents the idea that “America is the greatest nation in the world, the only remaining superpower” whereas American values based on “democracy, freedom, liberal economies” represent progress and superiority over other cultures.122 Finally, the idea of populism represents the symbolism of the “rule by the people” whereas representative democracy and human rights dominate the symbolic imagery of populism.123 In the end of the campaign, NAFTA became associated with U.S. dominance over the agreement overshadowing Mexico’s image as an inferior partner. Hence, image identity manipulation has led to a portrayal of NAFTA as an agreement where member-states are not equal partners, but where the U.S. dominates member-state relations.124 In order for NAFTA to be accepted, pro-NAFTA lobby groups were compelled to construct NAFTA identity adopting U.S dominance over the agreement demonstrating that distrust permeates the regional context of intergovernmental relations.

In order to deepen energy security integration under North American regionalism, member-states must initiate the process of collective identity formation with regard to the issue of energy security where a “shared knowledge or culture” with regard to energy security can be internalized leading to the institutionalization of energy security at the regional level. However,

120 Ibid, 435.
121 Ibid, 440.
122 Ibid, 440.
123 Ibid, 441.
NAFTA’s regulatory environment is strictly designed to facilitate free-market flows between member states without synchronizing and harmonizing member-states’ energy policy interests at the regional level. Institution-building with regard to economic issues requiring political implications is needed to generate greater efficiency within the regional energy sector.

NAFTA is a relatively new agreement with just over 10 years in the making. The agreement’s institutional framework allows for much innovation. The setback with NAFTA begins with the narrowly defined nature of the agreement that negates the formation of a sense of belonging and trust among member states because of the asymmetrical nature of the agreement. The asymmetrical nature of NAFTA regionalism is defined as a structure where political identification is low while economic interdependence is high. However, since NAFTA is a relatively recent agreement, collective identity formation with regard to regional energy security can eventually emerge within the perspective that “repeated compliance” with regards to certain rules becoming eventually internalized and integrated within NAFTA’s regulatory predisposition.

Nevertheless, there is a need to emphasize on identifying goals in NAFTA’s economic program. While member-states retain their individual national identities, in selective economic policy intensive areas of interest such as energy security, collective identity formation between member-states is warranted. Even if states initially comply with an institutionalized context of energy security for reasons of coercion or self-interest, continuing adherence over time ‘to the rules of the game’ will tend to produce conceptions of identity and interest which presuppose, making compliance habitual or second nature. NAFTA is an institution with “multilevel

126 Pastor, North American Community, 361.
127 Ibid, 361.
governance” where “the regime is encompassing major trends and transformation.” While NAFTA governance is lacking with regard to coordinating nation-state economic policies, there is room for improvement since NAFTA’s regulatory regime has flexibility in the adoption of new legislative initiatives.

With regard to energy policy coordination between member-states, a variety of forums have been created to encourage greater convergence in the regional energy market. Strong bilateral energy trade relations between Canada and the United States have led to the creation of the Energy Consultative Mechanism (ECM). The ECM was created in 1980 and was used as a bilateral forum where energy policy issues of interest to Canada and the U.S. were discussed upon pertaining to energy research and development with the emphasis of coordinating energy policy initiatives. Furthermore in April 2001, member-states under NAFTA agreed to create the (NAEWG) North American Energy Working Group in order to improve North American energy supply networks constant with the application of sustainable development. However, these forums have not led to substantial results with regards to generating greater regional energy market integration since member-states have not integrated within their national cultural environment a collective identity relating to the idea of energy security.

These institutions lack legitimacy, authority and autonomy with respect to their authoritative roles over the regional energy market, demonstrating that issues concerning energy security should be institutionalized under NAFTA’s regulatory provisions. NAFTA need not rest on the creation of an institutional paradigm such as is adopted under the EU, however there is a need for common energy policy interests between nation-states to become institutionalized under the agreement’s dispositions.

128 Morales, Institutionalization, 61.
129 Hufbauer and Schott, NAFTA Revisited, 425.
VI. Conclusion

Energy security legislation under NAFTA is in great need of reinvention. There is a need to institutionalize energy security under a regional framework. NAFTA’s chapter 6 energy provisions need to integrate within their definitional criteria that energy security implies more than the security of energy supply, implying the application of programs based on sustainable development and infrastructure development. Mexico retains much potential with regard to the country’s energy reserves, however as long as NAFTA remains strictly adherent to free-market principles where member-states do not have a voice in energy trade matters, Mexico will continue to resist further integrating the country’s energy sector into NAFTA. Mexico would benefit from greater investment within the country’s energy sector through programs based on regional infrastructure development; however the regulatory nature of NAFTA prevents such initiatives from materializing.

The creation of a North-American institutionalized macro-managed energy security parameter under NAFTA requires that national sovereignty not be taken for granted since confrontation ensues and progress is forestalled. When member-state sovereignty is violated, member-states become distrustful towards one another preventing the expansion of economic trade transactions across borders.

NAFTA’s institutional structure needs to be strengthened in order to generate greater efficiency in regional energy security integration. For one, the NAFTA Coordination department needs to strengthen its role in the “day to day management of NAFTA’s work program” so that a new energy security policy initiative is implemented and carried through by member-states. Furthermore, the role of NAFTA’s Committees and Working Groups that facilitate trade and
investment need to play a greater role in the security of energy supply between member-states encouraging Mexico to open its energy market to foreign investment so that the country can provide much needed energy supplies to the North American market. Moreover, NAFTA’s secretariat that manages the organization’s dispute resolution mechanism needs be strengthened in its judiciary role so that permanency characterizes the institutional order of the organization making sure that regulations are enforced and followed by member-states.

NAFTA’s preamble orienting the organization’s agenda setting goals explicitly stipulates that the organization wishes to “strengthen the bonds of friendship and cooperation between member-states while also emphasizing that the organization wishes to promote sustainable development within North American economic trade.” In order to do so, the issue of collective identity formation with regard to the idea of energy security needs to be resolved through the process of institution-building where member-states’ energy policy interests are harmonized and coordinated under NAFTA’s regulatory and institutional arrangement. Without greater collective identity formation with regard to the idea of energy security, deepening energy security integration under North American regionalism will be met with difficulty since distrust permeates member-state relations. Expanding regional energy security to include South America within the equation necessitates that the asymmetric outcomes of the agreement be resolved setting forth a relationship between member-states based on trust. Energy security integration is about ‘filling in’ NAFTA’s institutional framework.

Bibliography


