

**CROSS-BORDER TRAVEL  
IN NORTH AMERICA:  
THE CHALLENGE OF U.S.  
SECTION 110  
IMMIGRATION  
LEGISLATION**

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Globalization is contributing to the broadening and deepening of interdependence among societies and states, and events in one part of the world are having a greater impact on peoples and societies in distant locations. Many states and societal groups have responded to globalization pressures by supporting freer trade, foreign investment and capital flows, but they have generally been far more reluctant to support the freer movement of people. Thus "among factor exchange systems financial markets are the most globalized, [while] labour markets are the least so. No other area of economic life remains so much under the thrall of states and so resistant to globalizing effects."<sup>1</sup> As national regulations on trade, foreign investment, and capital flows are liberalized, there are growing pressures to facilitate international travel by business persons, professionals, and some labor groups such as "guest workers" in Western Europe and farm workers in

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\*A list of acronyms used in this article is provided on page 51.

North America. For example, the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) have provisions to promote freer trade in services, and this often requires physical proximity between the service providers and service users. Pressures therefore increase to permit service providers in one member country to travel more easily to other member countries.<sup>2</sup>

While the pressures to liberalize regulations on cross-border travel have increased, there strong governmental and societal counterpressures persist. They are particularly evident in North America where the issue of Mexican migration to the United States has been a highly sensitive issue. This paper focuses on one instance where the United States Congress passed highly controversial legislation to closely monitor the cross-border movement of aliens (or non-U.S. citizens) at the Mexico-U.S. and Canada-U.S. borders: Section 110, just one item of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (*IIRIRA*). Shortly before the 1996 U.S. presidential and congressional elections, the Congress passed the *IIRIRA* and president Bill Clinton signed the act only two days later. Although Section 110 was to be implemented by September 30, 1998,

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the U.S. Congress deferred the implementation date for an additional thirty months to March 30, 2001, because of strong opposition from Canada, Mexico, and a wide range of societal groups in the United States. Nevertheless, Section 110 has not been repealed and it continues to pose a major threat to freer cross-border travel in North America.

If Section 110 is implemented, it will require the U.S. Immigration and Naturalization Service (INS) to develop an automated control system that will "collect a record of departure of every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States."<sup>3</sup> In effect, Section 110 will require all non-U.S. citizens to be inspected by an INS officer when leaving or entering the United States at all ports of entry, including land borders. The purpose, according to the text of the act, is to "enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General."<sup>4</sup> The U.S. government is understandably concerned about this issue, because it is estimated that about 40 percent of all illegal immigrants enter the country legally and then remain beyond the permissible time period.<sup>5</sup> In the view of the legislation's supporters, Section 110 would ensure detection of these illegal immigrants whenever they attempted to leave and return to the United States.

But critics have argued that the great majority of people entering the United States with visas follow the rules and depart on time, and that Section 110 would do little to catch those people who are violating U.S. immigration laws.<sup>6</sup> To implement Section 110, the INS would also have to direct huge and costly resources for more inspection officers and new equipment. Indeed, the INS has estimated that two to three billion dollars would be required for infrastructure costs alone without even taking into account increased operating expenses.<sup>7</sup>

Most importantly for this paper, critics maintain that the implementation of Section 110 would also have a number of unintended consequences. First, most of the illegal immigration occurs along the southern U.S. border, but according to Greg Boos, an immigration attorney in Bellingham, Washington, the new law would also apply to Canadians crossing the northern U.S. border, and this fact had not been generally evident to the members of Congress when they had

voted for the legislation.<sup>8</sup> Second, although Section 110 is aimed at only one type of cross-border travel – illegal immigration in the United States – it would adversely affect cross-border travel for a wide range of purposes totally unrelated to immigration. Each year about 116 million people cross the Canada-U.S. land border and at least 254 million people cross the Mexico-U.S. land border. Section 110 procedures would result in massive delays and exert a devastating impact on people such as shoppers, commuters, tourists, and those visiting family and friends for relatively brief periods. Third, Section 110 would severely interfere with NAFTA's goal of freeing trade between Canada, the United States and Mexico. About 70 percent of all bilateral merchandise trade between Canada and the United States is shipped by truck, and the vast majority of Mexico-U.S. trade is also transported across the land border by an estimated 3.5 million trucks each year. "Just in time" delivery has become the norm in the automobile and other manufacturing sectors, and the cross-border "delivery of parts delayed by as little as 20 minutes can cause expensive assembly line shutdowns" in auto plants in Michigan and Ontario.<sup>9</sup> Clearly, the border delays caused by Section 110 would have a substantial impact on the commercial activities of the three North American states.

Drawing upon the literature on domestic-international interactions by Helen Milner and Robert Keohane, this essay uses several variables to explain why the U.S. Congress and president enacted Section 110, and why Congress has delayed its implementation but thus far has not repealed it. Particular attention is given to the factors determining who has had most influence in congressional policy-making on issues such as Section 110. For instance, a relatively small number of congressional staffers and members selected the final wording for the Section 110 legislation, and a large number of members of Congress voted for it without fully realizing its implications. A range of societal and governmental factors also contributed to an anti-immigrant atmosphere which was conducive both to the passage of Section 110 and to reluctance to repeal it. This paper also argues that NAFTA is changing the "architecture" of North American relationships so that it is becoming more difficult to separate Canada-U.S. from Mexico-U.S. cross-border travel issues. Although Canadians have been able to travel across the U.S. border far more easily than Mexicans, NAFTA's impact helps to explain why Canada has not been exempted from the Section 110 legislation.<sup>10</sup>

In a more general sense, the essay shows that the internal struggle among domestic groups often plays a critical role in determining whether the United States will have a cooperative or conflictual relationship with Canada and Mexico on foreign policy issues. In an age of interdependence it also becomes more difficult to separate domestic from international issues, and transnational alliances among groups in all three countries have had a major influence on the domestic U.S. debate over cross-border travel. Intergovernmental cooperation occurs when "the policies actually followed by one government are regarded by its partners as facilitating realization of their own objectives, as the result of a process of policy coordination."<sup>11</sup> Cooperation is usually contrasted with competition or conflict, "both of which imply goal-seeking behavior that strives to reduce the gains available to others or to impede their want-satisfaction."<sup>12</sup>

Since Section 110 threatens to impose delays and inconvenience on anyone crossing the southern and northern U.S. borders for any reason, it could severely impede the "want-satisfaction" of Canadians, Mexicans, and those Americans with a vested interest in developing cross-border linkages. It is therefore not surprising that Section 110 has contributed to a considerable amount of ill-feeling and controversy. For example, Canada's ambassador to the United States has indicated that Section 110 "could have significant cost implications for the United States as well as affect the mobility of millions of Canadians." The Mexican ambassador to Washington has argued that Section 110 would "disrupt the intense trade relationship" between the two countries and interfere with the development of border communities. According to Senator Edward Kennedy of Massachusetts, implementing "the Section 110 system across the board at this time would do more harm than good." Governor George Bush of Texas has cautioned that "provisions such as this could have a severe economic impact on our border communities, as increased delays translate to fewer cars, trucks and people crossing the border to conduct business and do their shopping."<sup>13</sup> A member of the U.S. House of Representatives from North Dakota expressed the views of many congressional critics of Section 110 when he stated that the measure proposed to "put in place a system that could not work, that will not work, and that threatens commerce on both borders."<sup>14</sup>

Some background on globalization and attitudes toward cross-border travel, on the role of the North American Free Trade Agreement, and on the approach used in this paper to examine domestic and international conflict over the issue will provide the context for an analysis of Sections 110.

## I. GLOBALIZATION AND ATTITUDES TOWARD CROSS-BORDER TRAVEL

Migration is "one of the constitutive processes of globalization today"<sup>15</sup> despite efforts of many states and societies to decide who can and cannot enter their territory. Thus, people are increasingly on the move, leading some analysts to refer to migration levels as reaching "crisis" proportions.<sup>16</sup> It is estimated that the number of refugees in the world increased from 1.5 million in 1951, to 4.6 million in 1979, to 8.2 million in 1981, and to 18.2 million by 1993. Furthermore, there were about 24 million people who were internally displaced within their countries of origin in 1993. Since then a staggering increase in the numbers of people who have been displaced by ongoing conflicts in the former Yugoslavia and elsewhere has occurred. These figures do not include the large numbers of people who have left their homes voluntarily to search for work. The United Nations High Commissioner for Refugees (UNHCR) estimates that there were 25 to 30 million *legal* labor immigrants, and 20 to 40 million *illegal* labor immigrants around the world in 1996.<sup>17</sup>

The United States has been a major destination for illegal immigrants. Mexico is the largest single source for illegal aliens, although illegals have also crossed the Mexico-U.S. land border from El Salvador, Guatemala, Honduras, and Nicaragua. In smaller numbers they have crossed the Canada-U.S. border. Although Mexican illegal immigration fluctuates in accordance with the state of the Mexican economy and the economic opportunities available for Mexicans in their home country, it has generally increased in recent years. In efforts to deal with the growing immigration pressures, the United States instituted a one-time amnesty program for illegal immigrants from all foreign countries in 1986 that resulted in 3.1 million people coming forth to regularize their status. Nevertheless, the immigration pressures have continued, and it is reported that 200,000 to 300,000 or more illegals cross the U.S.-Mexico border each year. The U.S. Census Bureau estimates that about 1.3 million illegal immigrants reside in California alone, most of them coming from

Mexico.<sup>18</sup> Furthermore, a number of Europeans are remaining in the United States beyond the permissible time period.

Although many would argue that “the power to admit or exclude aliens is inherent in sovereignty,” the global pressures generated by population movements are making international borders more permeable.<sup>19</sup> The presumed ability of sovereign states to decide whom to admit, and under what conditions and circumstances, is also being constrained by international and subnational pressures. At the international level, the gradual emergence of a human rights regime, rooted in international agreements, organizations, and codes of conduct makes groups such as immigrants, refugees, and migrant workers more visible under international law. Thus, a group of eminent international legal experts conducting a study of the generally accepted principles and rules of international law relating to cross-border travel concluded that

a state has the competence to control and to regulate the movement of persons across its borders. This competence is not absolute. It is limited by the right of individuals to move across borders and by the obligations of the State that arise from generally accepted principles of international law and applicable international agreements.<sup>20</sup>

For example, several international agreements call upon states not to adopt entry policies that discriminate on the basis of race, religion, sex, and language; they include the 1948 Universal Declaration of Human Rights, the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, and the 1966 Covenant on Civil and Political Rights. In regard to refugees, states signing the 1951 Convention Relating to the Status of Refugees agreed to the principle of *non-refoulement*, referring to “the process of forcibly returning certain classes of people to a country where they are likely to be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion.”<sup>21</sup> The UNHCR takes the position that the *non-refoulement* principle should apply to foreigners who request asylum as well as to refugees, and that individuals who request asylum should not be returned home before their cases have been adjudicated. In regard to migrant workers, the International Labor Organization (ILO) has prepared two conventions; the first in 1975 was designed to ensure the basic human rights of migrant workers, and the second in 1990

aimed to protect foreign workers and their families from discrimination.<sup>22</sup>

Constraints at the subnational level are also limiting the nation-state's ability to impose barriers to cross-border travel. In a North American context, the expanding Latino community in several major U.S. states has exerted growing political influence. More than one in every four Californians is Latino (80 percent of Mexican origin), and they account for about 38 percent of the city and county populations of Los Angeles. During the lengthy battle in the U.S. Congress that resulted in the 1986 Immigration Reform and Control Act, the Mexican-American community helped prevent some U.S. lawmakers from passing even more restrictive legislation.<sup>23</sup>

Subnational groups in North America have also exerted influence on their governmental representatives to facilitate land border crossings for business and professional people, tourists, commuters, and cross-border shoppers. For example, in the Pacific Northwest (or "Cascadia") Canada-U.S. border region a number of informal groupings such as the Pacific Northwest Economic Region, the Pacific Corridor Enterprise Council, the Discovery Institute, and the Cascadia Education and Research Society have sought to facilitate the movement of people as well as goods.<sup>24</sup> Arguing that Cascadia's competitiveness in the global economy depends upon overcoming impediments and congestion at the border, these groups have promoted plans to eliminate "border crossing and trade barriers" and to create a seamless transportation system" extending from Eugene, Oregon, to Vancouver, British Columbia.<sup>25</sup> One result of their efforts was the introduction of a Peace Arch Crossing Entry (PACE) commuter lane at the main border crossing between British Columbia and Washington State in 1991, permitting frequent and low-risk travelers who have undergone a police background check to bypass regular inspection lanes. The PACE lane proved to be so successful that the concept was eventually extended from the Pacific Northwest to some other regions on the Canada-US border.<sup>26</sup> Although the term "PACE" was originally used on both sides of the Peace Arch border crossing, when the concept became more national in scope in Canada the name was officially changed to "CANPASS". Efforts to develop dedicated commuter lanes on the U.S.-Mexico border in the San Diego-Tijuana region have also been patterned after the Pacific Northwest example. The San Diego Dialogue, which is a partnership between members of the business, government, and academic com-



munities in the greater San Diego and Tijuana areas, published a study in April, 1994, that pointed to the high volume of border crossings by commuters, shoppers, and tourists in the region.<sup>27</sup> This report led the U.S. Congress to authorize a dedicated commuter lane pilot project (called a SENTRI or Rapid Access lane) for business people at the Otay Mesa port of entry between San Diego and Tijuana, and the pilot project has also been extended to one lane at the San Ysidro border crossing.<sup>28</sup>

Despite international and subnational pressures on states to extend certain basic rights to aliens and to ease controls over cross-border travel, international organizations such as the UNHCR and the ILO, and subnational groupings such as the Pacific Northwest Economic Region and the San Diego Dialogue have little or no authority to enforce any changes. Instead, they must depend largely upon cajoling national government officials and attempting to alter societal attitudes. At the international level, for example, the ILO conventions on basic rights of migrant workers have been ratified mainly by European countries and do not affect the countries in the Persian Gulf which often use migrant workers for work related to oil projects. The United States and European governments have also had periodic clashes with the UNHCR staff who sometimes question whether these governments provide sufficient protection to asylum seekers from places such as Haiti, Eastern Europe, and North Africa.<sup>29</sup> The subnational groupings discussed above have even less authority than the international organizations and must depend on attitude change and consensus-building to further their objective of promoting more permeable borders.

Attitude change has been difficult because of the strong counterpressures exerted by some societal groups against freer cross-border travel. In the area of immigration, societies and governments in both industrial and Third World countries have demonstrated particular resistance to the forces of globalization. Anti-immigrant sentiment in industrial states generally fluctuates over time in response to a wide range of factors. In periods of global economic recession, for example, unemployment increases and lower-skilled workers become more concerned that immigrants will take away their jobs. The costs of health services, education, and welfare for immigrants also appear more onerous to national and subnational governments during recessions. Despite these fluctuations in attitudes, as globalization has increased there have been growing signs of anti-immigrant

sentiment in a number of industrial states. A public opinion survey conducted by the European Union in 1993 found that 52 percent of respondents felt there were too many immigrants; a 1993 New York Times/CBS national telephone survey reported that 61 percent of Americans favored a decrease in the number of immigrants, compared to 42 percent in a 1977 Gallup poll; and a recent federal study in Canada found that 44 percent of Canadian respondents felt there were too many immigrants.<sup>30</sup>

The politics of immigration is exceedingly complex, and there are also countervailing tendencies. First of all, the market demand for certain types of foreign workers sometimes makes it difficult for political leaders to limit immigration. In 1998, for example, the U.S. Senate voted to increase the number of foreign workers permitted to fill thousands of short-term computer programming jobs in response to calls from the high-technology industry, and the New York City Board of Education advertised to hire as many as 50 Austrian teachers because of a shortage of qualified candidates in math and science.<sup>31</sup> Market demand also extends to the need for various types of less skilled workers. For example, some U.S. states such as California have looked to Mexico for agricultural laborers, often on a seasonal basis. It was therefore no accident that the 1986 U.S. immigration law included a Special Agricultural Worker (SAW) legalization program which enabled a number of undocumented immigrants who had worked in agriculture to apply for temporary legal status (certain requirements such as English proficiency and a knowledge of U.S. history were necessary to meet before they were eligible for permanent legal residency).<sup>32</sup>

Secondly, newly-naturalized immigrants can form an important voting constituency, affecting elections and influencing policies both nationally and regionally (e.g., in U.S. states with large numbers of immigrants such as Florida, Texas, and California). In 1986 the U.S. Congress passed the Immigration Reform and Control Act (IRCA) which involved a "carrot-and-stick" approach designed to gain control over the immigration process. Among the "carrots" was a provision permitting previously undocumented Mexican immigrants who had resided in the United States since 1982 to legalize their immigrant status. The IRCA, along with the U.S. Immigration Act of 1990 (IMMACT), contributed to substantial increases in immigration levels. Indeed, in fiscal year 1996 the number of new immigrants to the United States reached its highest level in the postwar period. The

effects of the 1986 and 1990 U.S. immigration laws, combined with a "Citizenship USA" plan adopted by the Clinton administration in 1996, permitted over one million people to be sworn in, often in citizenship ceremonies with up to 12,000-15,000 participating individuals. Although the Clinton administration's policies on immigration were in fact inconsistent and ambivalent, these new citizens provided President Bill Clinton with an important source of votes for his re-election.<sup>33</sup>

The United States government has responded to these competing pressures in recent years by combining "continued high rates of immigration with gestures of resistance, in particular towards illegal and criminal aliens."<sup>34</sup> Although concerns about illegal and criminal aliens are understandable, the measures adopted have sometimes been blunt instruments which have ignored the human rights of undocumented immigrants and have also inconvenienced legal immigrants, cross-border visitors and commuters. This essay provides one indication of how anti-immigrant sentiment can affect U.S. policies toward cross-border travel in North America.

## II. NAFTA AND CROSS-BORDER TRAVEL

The North American Free Trade Agreement (NAFTA) establishes a free trade area which involves the removal of all tariffs and the liberalization of trade in services between Canada, the United States, and Mexico.<sup>35</sup> NAFTA also goes beyond common definitions of a free trade area, since it calls for the freer movement of foreign investment and capital flows which is normally associated with a common market.<sup>36</sup> But NAFTA does little to promote the freer movement of another factor of production associated with a common market - the cross-border movement of labor. Only in chapter 12 on "Cross-Border Trade in Services" and in chapter 16 on "Temporary Entry for Business Persons" does the NAFTA deal selectively with the cross-border movements of some business and professional people. (Chapters 13 and 14 on telecommunications and financial services also contain some provisions that relate to non-national service providers.)<sup>37</sup> As for the NAFTA side agreement on labor cooperation, officially called the "North American Agreement on Labor Cooperation" or NAALC, it does not deal with the issue of promoting labor mobility. The NAALC was negotiated because the United States and Canada were concerned that their businesses would relocate in Mexico to take advantage of lower wages and

weaker enforcement of labor standards. It therefore focuses on such issues as the right to organize, bargain collectively, and strike; minimum employment standards; labor protection for children; occupational safety and health; and the elimination of employment discrimination.<sup>38</sup>

NAFTA's general inattention to facilitating the movement of people in the region (other than the limited provisions on business and professional people) stems partly from the sensitivity of the illegal immigration issue in a Mexico-U.S. context. Indeed, the United States had hoped that NAFTA would accelerate the development process in Mexico and thus *decrease* the incentive for Mexicans to migrate across the border. In testimony before the House Subcommittee on International Law, Immigration and Refugees, the deputy U.S. trade representative stated: "NAFTA does not explicitly address the issue of illegal immigration, but in the long run, it is one of our best bets to reducing illegal immigration.... Ultimately, the answer to the problem of illegal immigration from Mexico is sustained robust economic growth in Mexico."<sup>39</sup>

The labor issue is particularly sensitive because there has been a gradual shift in demand away from less-skilled workers to more-skilled ones in the advanced industrial countries. Wages of the less-skilled relative to the more-skilled workers in the United States have fallen sharply since the late 1970s. From 1979 to 1988, for example, the average wage of a U.S. high school graduate relative to of a college graduate declined by 20 percent. In European industrial countries and Canada, the wage differentials have been less extreme, but the unemployment rates for less-skilled workers have been much higher.<sup>40</sup> In 1979, only one country in the Organization for Economic Cooperation and Development (OECD) area had an unemployment rate at the double-digit level. By 1996, ten European countries in the OECD had unemployment rates in double-digit figures, and Canada's 9.7 percent unemployment rate was only slightly below the double-digit level.<sup>41</sup>

The effects of immigration from less-developed countries (LDCs) on rising unemployment rates among semi-skilled and unskilled workers in industrial states is a contentious and unresolved issue.<sup>42</sup> Immigrants may reduce employment opportunities for less-skilled workers under certain circumstances – for example, in areas where immigrants are concentrated and the local economy is weak because of recessionary conditions. Nevertheless, "there is no strong evi-

dence that immigration reduces overall availability of jobs or wages.”<sup>43</sup> Indeed, a number of analysts argue that migrants often enter low-wage occupations which do not attract the local population; that many migrants are self-employed and may hire both natives and immigrants in their businesses; and that the incomes that migrants earn, save, and spend can help to stimulate the domestic economy. Evidence also exists that regions where immigrants are concentrated often are more successful in attracting foreign capital, that immigrants often spur technological innovation, and that immigrants can have a positive effect on the retention of industries that otherwise would have moved abroad.<sup>44</sup> Yet political leaders sometimes use fears that migration will adversely affect employment “to impose greater restrictions on the international mobility of labour.”<sup>45</sup> The restrictions imposed are aimed mainly at the movement of semi-skilled and unskilled labor. Thus, NAFTA Article 1601 refers to “the desirability of ensuring temporary entry” for business persons on a reciprocal basis, but it also calls for the “need to ensure border security and to protect the domestic labor force and permanent employment” in the NAFTA countries.<sup>46</sup>

Since the issue of mobility is largely excluded from the NAFTA, the three NAFTA countries do not, and are not required to, provide equal treatment in this area. For example, Canadians do not need to have a visa for entry into the United States, and do not normally have to present a passport when crossing the border by land. (Canadians usually require passports when travelling to the United States by air, and *vice versa*.) Mexicans wishing to travel to the United States, by contrast, must have both a passport and a visa unless they are using a “border crossing card.” Since the 1940s the U.S. INS has issued border crossing cards to an estimated five to six million Mexicans who reside near the boundary and wish to make brief trips to the United States. The border crossing card is a form of local passport (commonly known as the “*pasaporte fronterizo*” or “*mica*” – a laminated card), which is used for making brief excursions across the border for dining, shopping, and visiting friends and relatives. It is designed only for travel within 25 miles of the border for periods of up to 72 hours; to go beyond that distance, Mexicans must get a \$6.00 travel permit from U.S. immigration authorities at the border. Further up the highways, for example between San Diego and Los Angeles, there are immigration check points, and those who have not purchased the travel permit can have their border crossing cards confiscated.

The U.S. Congress has been concerned about counterfeiting and fraud with the border crossing cards, especially because many of these cards were issued with no expiration dates; some adults are crossing the border using cards with their childhood photographs. As a result the border crossing cards are being phased out and will no longer be valid after September 30, 2001. Instead U.S. consulates in Mexico and the U.S. embassy in Mexico City will issue new "laser visas" which are essentially high-technology versions of the old border crossing cards. The laser visa card has an "optical stripe" in which the card holder's digital photograph, fingerprints, biographical data, and a state department control number are embedded. Applicants will have to provide a Mexican passport, an official electoral card or the "*forma trece*," and evidence of employment in Mexico.<sup>47</sup> The more stringent regulations for Mexicans as compared with Canadians stems largely from the fact that there are so many illegal Mexican immigrants in the United States, and that such a large percent of these Mexican migrants are unskilled workers. Nevertheless, even Mexican business visitors and professionals with a university B.A. (or "*licenciatura*") degree are treated less favorably than their Canadian counterparts by U.S. immigration officials.<sup>48</sup>

Although NAFTA does not formally require the United States to institute similar policies toward Mexicans and Canadians crossing the U.S. land borders, it is gradually contributing to the development of an economic, psychological, and geographic "space" in North America. Academics and policymakers today are speaking of an "emerging North American jurisprudence" and of a "new architecture" in which the three North American states are becoming more closely linked.<sup>49</sup> Under such circumstances, U.S. political leaders — especially those in the southwestern United States near the Mexican border — have become more concerned about charges that U.S. regulations on cross-border travel discriminate against Mexicans. Thus a U.S. immigration lawyer who was formerly an American vice consul in Sonora, Mexico, asserts that "NAFTA's immigration provisions allow for discriminatory treatment of Mexican nationals as compared to Canadian nationals."<sup>50</sup> As the discussion below indicates, the closer linking of the North American economies under NAFTA helps to explain why the Section 110 legislation is designed to apply to the northern U.S. border with Canada as well as to the southern U.S. border with Mexico.

### III. MAJOR VARIABLES IN THE SECTION 110 ISSUE

Most theories of international cooperation and conflict have largely ignored the role of domestic politics. Even today many theorists treat countries largely as unitary actors and explain international conflict in terms of "the nation-state's" fear that others will cheat on international agreements or "the nation-state's" concern that other states will achieve greater relative gains.<sup>51</sup> Still, there is also a tradition in the literature explaining foreign policy and international relations in terms of domestic-international interactions. In the 1950s to 1970s, for example, some theorists examined decision-making and bureaucratic politics to evaluate the domestic determinants of foreign policymaking.<sup>52</sup> Domestic politics generally has been a more important factor to consider in the study of international socio-economic issues than in the study of security issues. With the decline of the Cold War beginning in the late 1980s, international relations scholars have devoted greater attention to domestic variables and have explored domestic-international linkages in studies of international policymaking, international negotiation, and the sources of cooperation and conflict.<sup>53</sup> As already discussed, cross-border travel is often a highly-charged domestic issue, and this paper will rely upon recent theoretical studies that focus on these domestic-international linkages to interpret it.

In explaining why Section 110 was passed, why there was considerable opposition to it, and why the U.S. Congress delayed its implementation rather than revoking it, three variables examined by Helen Milner are particularly useful:<sup>54</sup>

1. differences among the interests and policy preferences of societal and governmental actors,
2. the nature of domestic political institutions, and
3. the distribution of information.

While Milner uses these three variables to explain cooperation and conflict in the negotiation of international agreements, this paper draws on them to interpret cooperation and conflict over cross-border travel both among domestic groups in the United States and between the United States and its two neighboring countries, Canada and Mexico. This essay does *not* claim that domestic factors are more important than international factors in explaining international cooperation and conflict; rather, it argues that domestic as well as international factors must be considered in explaining conflict and cooperation in socio-economic areas such as cross-border travel. It

also points out that the prevalence of transnational alliances often makes it difficult to strictly differentiate domestic from international variables.

The first major variable is the differences among the interests and policy preferences of societal and governmental actors. The policy preferences of societal actors depend upon their value systems, which may incorporate pragmatic considerations such as maximizing their economic welfare, and other fundamental attitudes (and prejudices) which are not necessarily based on economic considerations. Societal groups often have divergent policy preferences because they are affected differently by government policies. Similarly, government leaders such as members of the U.S. Congress opt for policy preferences based on both their personal attitudes and their wish to retain political office. Political leaders who want to be re-elected may have different policy preferences because of their party affiliation and the characteristics of their constituency. Since the Section 110 issue could have a major impact on Canada and Mexico in trade as well as in cross-border travel with the United States, societal and governmental actors in these countries have their own policy preferences as well as a vested interest in influencing debate over the issue in the United States.

The second major variable consists of institutions, which can be defined as "persistent and connected sets of rules (formal or informal) that prescribe behavioral roles, constrain activity and shape expectations."<sup>55</sup> Societal groups have differing degrees of influence on issues, and a country's political institutions tend to favor the interests of some groups over the interests of others. Some institutions in a country (e.g., the U.S. Congress) are also generally more open to the pressure of interest groups than others (e.g., the U.S. executive). This paper is particularly concerned with the role of the Congress, and with the factors determining who has most influence in shaping congressional policy-making on issues such as Section 110. Some attention is also given to the legislative-executive interactions in the U.S. presidential system as a factor in policymaking.

The third major variable is the distribution of information. Asymmetric or uncertain information can lead "to outcomes that prevent optimal levels of exchange or that foster conflict."<sup>56</sup> Some earlier studies have found that "local misreadings of domestic politics" as well as "cross-border ignorance" can contribute to lack of cooperation and increased conflict.<sup>57</sup> This essay similarly finds that



incomplete information played a significant role in perpetuating misunderstandings over the Section 110 issue, not only between the United States, Canada, and Mexico, but also between members of the U.S. Congress in northern, southern, and southwestern states.

#### **IV. WHY WAS SECTION 110 ENACTED?**

The Congress and president enacted Section 110 in 1996 partly in an effort to deal with the problem of illegal immigration in the United States. American concerns about this issue obviously predate the passage of Section 110. For example, ten years earlier the U.S. Immigration Reform and Control Act (IRCA) was passed mainly in response to domestic protests over rising illegal immigration. Adopting a “carrot- and- stick” approach, the 1986 Act permitted undocumented aliens to gain temporary (and then permanent) legal status if they could prove that they had lived in the United States continuously since January 1, 1982; imposed sanctions against employers who knowingly hired undocumented aliens; and introduced a guest-worker program to provide large numbers of low-wage workers for U.S. agriculture. But the effectiveness of the 1986 law was limited. Although about 3.1 million immigrants applied to legalize their status, the number of illegal immigrants continued to rise, and the sanctions program aimed at employers of illegals resulted in discrimination against minority workers and a range of abuses against undocumented aliens.<sup>58</sup> In the early 1990s a series of events raised the profile of the illegal immigration issue and caused many Americans to demand more stringent controls. For example, large numbers of Haitian refugees fled in rickety boats to the United States, followed by a similar wave of Cubans; the World Trade Center in New York was bombed by Islamic terrorists; and a drive-by shooting of two employees of the Central Intelligence Agency was attributed to a Pakistani immigrant.<sup>59</sup>

Although the growing pressures from refugees, illegal immigrants, and terrorist events attributed to foreigners were important international factors which partly account for the passage of Section 110, the extreme nature of the legislation resulted primarily from domestic factors. Two important domestic variables were especially relevant to the passage of Section 110: the interests and policy preferences of governmental and societal actors, and the nature of domestic political institutions.<sup>60</sup> There is considerable evidence that many congressional members did not fully realize the implications of

Section 110 when they had voted for the legislation. This lack of awareness is discussed below when I examine the nature of Congress as a policymaking institution. Despite this failure of congressional members to foresee the “unintended consequences” of Section 110, a variety of governmental, societal, and institutional factors in 1996 contributed to anti-immigrant sentiments that were conducive to the passage of the legislation.

A major domestic factor in the Section 110 issue was the declining economic fortunes of California in the early to mid-1990s which altered its policy preferences on the immigration issue. The 1980s had been extremely prosperous years, and employment in the state had increased from about 11 million jobs in 1980 to 15 million in 1990. But in June 1990, the boom period came to an abrupt halt, and California experienced a deep recession with rising unemployment levels. A variety of factors contributed to the state’s unemployment problems, such as a U.S. national recession, corporate downsizing and financial restructuring, the end of a real estate boom, a drought lowering agricultural output, and possibly an unfavorable business climate in the state.<sup>61</sup> The performance of the state economy was well below the U.S. national average in the early 1990s, and many analysts attributed it largely to a decline in U.S. defense spending with the end of the Cold War. California had ranked among the top three states in average annual defense contracts in the postwar period, and one study estimates that cuts in defense procurement and R&D contracts as well as the closing of bases accounted for over one-third of its total job losses from 1990 to 1993.<sup>62</sup> The state responded to these economic problems with increased pressures for anti-immigrant legislation which were felt nationally because of the large number of illegal immigrants in the state. Indeed, about 40 percent of the U.S. illegal immigrant population is estimated to live in California, and most of the balance resides in five other states. In November 1994, California voters approved a ballot initiative – Proposition 187 – to prohibit access of illegal aliens to a number of public services such as education and non-emergency health care. In the same year the Republican Party gained majority control of both houses of the U.S. Congress for first time in forty years, and this electoral shift also contributed to the victory of Proposition 187 in California. Polls indicate that about 78 percent of California Republicans, but only 36 percent of Democrats, voted in favor of Proposition 187.<sup>63</sup>

Proposition 187 resulted not only from the difficult economic conditions in California in the early 1990s but also from the policies of Pete Wilson, the Republican governor of California at the time. When he won the California gubernatorial election in November 1990, he was widely perceived as being a liberal on immigration issues. Indeed, as a senator in the 1980s he had supported legislation that permitted the free flow of immigrants for farm labor, and he had also backed many cases of illegal immigrants against the INS. As recession overtook the California economy in the early 1990s, however, Wilson sought to counter his declining popularity as governor by catering to the growing anti-immigrant sentiment. For example, in August 1993, he wrote to President Clinton demanding that the federal government stop providing health and education benefits to illegal immigrants and their children. He also called for an amendment to the U.S. constitution barring citizenship to children of illegal immigrants. Then he attached his November 1994 re-election campaign directly to the passage of Proposition 187. Wilson was certainly not the only "California politician to play the immigration card."<sup>64</sup> Senator Diane Feinstein, a Democrat who was also facing re-election at the same time, made similar efforts to highlight the importance of dealing with undocumented aliens. The campaigns of Wilson and Feinstein met with approval by much of the California electorate, and both were re-elected.

By the time Pete Wilson had ended his term as governor of California in early 1999, cross-border relations with Mexico were seriously damaged, and about 80 percent of the Hispanic vote had gone to a victorious Democrat, Gray Davis. Jorge Montaña, a former Mexican ambassador to the United States, charged that Wilson had single-handedly created an anti-Mexican atmosphere in California that produced a gamut of racist and xenophobic attitudes. Shamelessly, he used the issue of immigration to seek his reelection, never pondering the high cost it would have for Mexicans on both sides of the border.<sup>65</sup>

In summary, the dismal state of the California economy, combined with the strong position taken by the California governor Pete Wilson in the early 1990s, were major sources of pressure on members of the U.S. Congress to enact Section 110.<sup>66</sup>

As for domestic societal actors, the ability of some nativist groups to arouse anti-immigrant sentiment in the United States helps

to explain why the U.S. Congress took a "sledge-hammer" approach to the illegal immigration problem.<sup>67</sup> The most prominent of these nativist groups, according to the *Wall Street Journal*, is the Federation for American Immigration Reform (FAIR):

In the debate over immigration policy, no single group has received more attention than FAIR, a Washington-based non-profit [organization] that claims a membership of 70,000. For close to 20 years, in books, monographs, op-eds and thousands of newspaper stories, FAIR has made the case for tighter national borders.<sup>68</sup>

Formed in 1978, FAIR has its headquarters in Washington, D.C., a satellite office in Los Angeles, and field representatives around the country. It has run advertisements that blame immigration for a wide range of "evils", including multiculturalism and multilingualism, and it has called for "a temporary moratorium on all immigration except spouses and minor children of U.S. citizens and a limited number of refugees."<sup>69</sup> The founder of FAIR, Dr. John Tanton, has been an activist in the Sierra Club and Planned Parenthood, and he and his followers have distorted some of the positive goals of these groups to arouse anti-immigrant sentiments. For example, Tanton has argued that population growth is a serious threat to the environment, and that the key to population control in the United States is to reduce immigration. Actually, the fertility rate per woman in the United States is currently about 2.0, a birth rate which reflects a steady state in terms of population.<sup>70</sup> FAIR has been strongly influenced by the ideas of Dr. Garrett Hardin, a University of California biologist who has been a long-time supporter of eugenics and is now a member *emeritus* of FAIR's board of directors. Thus, the executive director of FAIR has argued that "it would be better to encourage the breeding of more intelligent people rather than less intelligent."<sup>71</sup> FAIR is most closely associated with social conservatives and accuses many immigrants of being "left-wing ideologues." Yet it has managed to cultivate alliances with some notables who have been associated with liberal causes to defuse charges of racial intolerance. Indeed, FAIR's supporters have included not only Pat Buchanan and the conservative magazine *National Review*, but also Eugene McCarthy, who during the 1960s had allied himself strongly with liberal opponents of the Vietnam War. The executive director of FAIR has argued that "it's hard to say" where FAIR stands politically. "Immigration's weird. It has weird politics."<sup>72</sup>

Nothing illustrates the “weird politics” of immigration more than the recent battle within the Sierra Club, the most prominent environmental organization in the United States, over whether or not it should enter the immigration fray. In April 1998, a group of dissidents forced the club to hold a referendum on a resolution to reduce immigration to the United States as a means of curbing population growth. Although the board of directors and 27 Sierra chapters opposed the resolution, there was considerable rank-and-file support, and backers included such notables as former interior secretary Stewart Udall, former Wisconsin senator Gaylord Nelson, and the co-founder of Earth First, Dave Foreman. Just 13.5 percent of the 550,000 Sierra Club members voted on the resolution, but it was turned down by only a 3-to-2 margin. People vote for a resolution such as the Sierra Club’s for a variety of reasons, and one should of course not assume that all supporters (such as Udall, Nelson, Foreman, and others) have shared FAIR’s nativist sentiments. Nevertheless, the executive director praised the club members who had voted against the resolution for refusing “to blame newcomers to our country for our own overconsumption.” FAIR, on the other hand, has indicated that “the grass-roots sponsors of the immigration initiative in the Sierra Club will continue to work for a policy change.”<sup>73</sup> FAIR has also pledged its support to American workers, and its claims include a highly dubious statement that “an estimated 1,880,000 American workers are unemployed or under-employed as a result of immigration.”<sup>74</sup> In sum, FAIR has tried to increase its appeal by portraying itself as “a non-partisan group whose membership runs the gamut from liberal to conservative.”<sup>75</sup> In fact, however, FAIR is most closely associated with social conservatives and with the Republican party. It testifies regularly before the U.S. Congress on immigration legislation, and in September 1996, it along with some other groups contributed to an atmosphere conducive to the passage of Section 110.

With the passage of Proposition 187 by California in the midst of a recession, and the pressures exerted by anti-immigrant societal groups such as FAIR, the election of Republican majorities in both the U.S. Senate and House of Representatives in 1994 provided the pre-conditions for stronger anti-immigration measures. Despite his rhetorical opposition to more stringent immigration policies, Clinton’s own policies were inconsistent and sometimes catered to anti-

immigrant sentiment in the population.<sup>76</sup> *The Economist* described the 1996 U.S. campaign in the following manner:

Pat Buchanan, in calling for a moratorium on immigration, played to ... nativist sentiment during the Republican primaries. The prospect loomed of an election-year bidding war in which Bill Clinton, eager to please middle America, called for tighter restrictions, and Republicans, eager not to be outdone, veered crazily towards Buchananism.<sup>77</sup>

The second domestic factor explaining the passage of Section 110 was the nature of political institutions at the local, state, and federal levels. In the U.S. federal system, state and local governments have borne the considerable cost of delivering housing, education, and health services to immigrants, refugees, and illegals that the federal authorities do not fully cover. As economic problems increased in such states as California and Florida in the early 1990s, the impact of migrants on the social services of these states became increasingly burdensome.<sup>78</sup> This federal division of responsibilities certainly contributed to the passage of Proposition 187 in California, which in turn led to pressures for the passage of Section 110.

Even more importantly, the nature of the U.S. Congress as an institution was a major factor in the Section 110 issue. In the United States, the Congress is largely responsible for debating and formulating immigration policy, and the immigration issue is therefore subject to a highly public process which is influenced by a wide range of local interests. Furthermore, the judiciary committees in the U.S. Congress have jurisdiction over immigration matters rather than the foreign affairs committees; this is significant because the judiciary committees are generally less attuned to the sensitivities of other countries than the foreign affairs committees. Of critical importance have been the chairs of the immigration subcommittees of the judiciary committees in the two houses of Congress, because they have considerable influence over what bills are considered by the House of Representatives and the Senate. Two individuals central to the passage of Section 110 were Lamar Smith (R-Texas), chair of the immigration and claims subcommittee in the House of Representatives; and Alan Simpson (R-Wyoming), chair of the Senate subcommittee on immigration.

Simpson and Smith, the two leading Republican voices on immigration issues at the time, were immigration restrictionists.

Indeed, they originally had favored legislation that would have slashed legal immigration by about 40 percent. Simpson, whose home state of Wyoming has the fewest foreign-born inhabitants of all 50 U.S. states, had announced that he would retire after 18 years in the Senate at the end of 1996.<sup>79</sup> Before retiring, Simpson wanted to combine restrictions on legal and illegal immigration into a single landmark bill that dealt with what he called “the strain on the fabric of America” caused by newcomers. Smith was prepared to follow a similar strategy in the House of Representatives.<sup>80</sup> In directing their attack on legal as well as illegal immigration, however, they alienated a large number of business firms with foreign-born engineers, scientists and other specialists who established a formal alliance, “American Business for Legal Immigration” (ABLI), to oppose the planned legislation. ABLI joined with other groups ranging from libertarian think tanks such as the Cato Institute and the Center for Equal Opportunity to liberal activists and religious and ethnic groups to demand that legal and illegal immigration be dealt with separately. In the end, this left-right coalition in favor of “splitting the bill” was too broadly based to overcome, and the Simpson/Smith efforts to combine legal with illegal immigration into a single restrictionist bill were defeated.<sup>81</sup>

After this failure, Simpson and Smith shifted their efforts to focusing on illegal immigration by way of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The complexity of this legislation was a major factor contributing to the passage of Section 110 although it was only one small item in the 1996 IIRIRA, “one of the largest and most comprehensive pieces of legislation enacted by the 104th Congress.”<sup>82</sup> It contains almost 200 sections dealing with a wide range of immigration issues. In view of the law’s sheer size and complexity, there were some unintended consequences, and a number of Congressional members voted for the IIRIRA without anticipating some of its effects. Nevertheless, the process by which Section 110 emerged from the U.S. Senate and House of Representatives also shows that a small number of key congressional staffers and members can sometimes exert an inordinate degree of influence.

Although Section 110 emerged from a conference committee ostensibly seeking a compromise between the House and Senate versions of the legislation, it in fact had little similarity with its two precursors. The initial idea in the original House and Senate bills was

to collect information on people who had entered the United States legally and then overstayed their visits. However, neither of the bills would have required that entry-exit control systems be established at land or sea borders. The House version called for establishing pilot projects to record entries and departures at at least three airports with the heaviest volume of traffic from foreign territories, while the Senate version contained a general provision requiring the Attorney-General to develop an automated entry-exit control system at airports. Ironically, the House and Senate bills were aimed mainly at Europeans rather than North Americans who had entered the United States under the Visa Waiver Pilot Program (VWPP) and had overstayed their visits. First enacted in 1986, the VWPP was designed to allow visitors from certain low-risk countries to enter the United States for not more than 90 days without first obtaining a visa. Each year about ten million people enter the United States under the program. Most of the countries eligible for the VWPP are European, and the original House and Senate bills stemmed from concerns that many individuals from the VWPP countries had been remaining in the United States beyond the 90 day period.<sup>83</sup>

In view of the complexity of the 1996 illegal immigration bill, the House and Senate versions were not debated and enacted until near the end of the 104th Congress. An "eleventh-hour agreement" was reached by congressional leaders to fold the IIRIRA immigration measure into "a giant catchall spending measure ... that would allow Congress to complete its work and adjourn."<sup>84</sup> Considering the sheer size of the combined appropriations/IIRIRA legislative bill and the speed with which it had been assembled, a small number of congressional staffers and leaders altered the Section 110 provisions in conference with little scrutiny by the Congress. Those involved were associated with of the House and Senate judiciary committees, and the chairs of the two immigration subcommittees played central roles. As Orrin Hatch (R-Utah), the chair of the Senate judiciary committee, subsequently acknowledged, the version that emerged from the conference committee was far more restrictive than its precursors in the Senate and House. "Significantly, the term 'every alien' was added only in conference, and its implications were not fully understood or debated." Unlike the precursors, the enacted version applied to land borders and seaports as well as airports.<sup>85</sup> Only after the full Congress had passed the conference report did it become clear that the term "every alien" in the legislation would



apply to Canadians as well as Mexicans, and that Section 110 could create enormous congestion at U.S. land borders affecting both short-term travellers and trade. Thus, the complexity of the immigration bill combined with the institutional characteristics of the U.S. Congress helps explain why the Senate and House of Representatives passed Section 110 without grasping the unintended consequences.<sup>86</sup>

Why did not U.S. President Bill Clinton consider vetoing the legislation? Presidents often counter protectionist policies in the Congress with more liberal policies in such areas as trade and foreign investment, and one would also expect this president to follow more liberal policies than the Congress on immigration issues. But President Clinton approved the IIRIRA only two days after it had passed the U.S. Congress; clearly the Administration had not taken sufficient time to examine its implications. It seems that the Clinton administration, like the Congress, was influenced by the anti-immigrant atmosphere in California and elsewhere in 1996 and did not follow consistently more liberal policies on the immigration issue. One critic of Clinton's record on refugees and immigrants has argued that "the Administration has been willing to stand its ground against extremes when it's clear it's politically safe."<sup>87</sup>

## **V. THE REACTION**

Americans with vested interests in cross-border linkages joined forces with Canadians and/or Mexicans to demand the repeal or drastic revision of Section 110. Since the new law allowed two years' lead time before implementation, the anti-Section 110 groups had time to launch a strong lobbying campaign. Nevertheless, there was continuing support for the legislation among some U.S. societal groups and among certain key members of the U.S. Congress. The following discussion examines the distinct perspectives of Canada, the northern U.S. border states, the southern and southwestern U.S. states, and Mexico on the Section 110 legislation.

### **A. The Canadian Position**

The United States and Canada are among the world's most interdependent of countries, but it is highly asymmetrical because of the much larger U.S. economy. As a result, cooperation between the two often has taken the form of "exemptionalism," in which Canada has sought exemptions from potentially injurious American economic policies. In the 1960s, for example, Canada experienced

serious balance of payments problems, and it sought exemptions on three occasions from American measures to limit foreign access to U.S. capital. The United States granted the request in all three cases, but it expected Canada to make concessions on monetary policy in return.<sup>88</sup> Largely because of exemptionalism, a number of writers referred to Canadian- American ties as a "special relationship." But Canada began to question whether it still had a special relationship with the United States when the administration of President Richard Nixon imposed a 10 percent surcharge on all dutiable imports in August 1971 and refused to exempt Canada. This was one factor contributing to Prime Minister Pierre Trudeau's efforts to diversify Canada's economic ties and decrease dependence on the United States during the 1970s and early 1980s.<sup>89</sup> In the 1980s, however, Canada became increasingly alarmed by growing U.S. trade protectionism, and Prime Minister Brian Mulroney sought a new form of exemptionalism from U.S. "trade remedy" laws (countervailing and antidumping duties) through the Canada-U.S. Free Trade Agreement.<sup>90</sup>

As has been the case with American trade and investment policy, Canada's main reaction to Section 110 was to seek an exemption for itself rather than to question the new U.S. law in general. Since it was aimed primarily at Mexican illegal immigrants, Canada at first took a low-key approach. The Canadian government simply assumed that it was "inadvertently included in the scope of this provision,"<sup>91</sup> and it anticipated that congressional leaders would move promptly to exempt Canada from the legislation. When no such congressional amendment was forthcoming, Canada launched a more public and broad-ranging campaign in July, 1997. For example, it elicited support from U.S. politicians and officials especially in the northern border states, ministers and members of parliament raised the issue with their U.S. counterparts, and Canadian companies and tourist organizations worked with American partners, buyers, and suppliers to raise concerns about the detrimental effects of Section 110.<sup>92</sup> The Canadian Embassy in the United States urged "that the Act be amended to exempt Canadians from new entry and exit controls"; the Canadian ambassador to the United States, Raymond Chrétien, seemed even to question whether Canadians should be considered foreigners when he wrote that "unfortunately, the Administration has stated unequivocally that the use of the word 'alien' does not leave any room for the exemption of

Canadians."<sup>93</sup> Ambassador Chrétien also wrote a letter to Lamar Smith, asking him to "confirm that Congress did not intend to make Canadians subject to this provision."<sup>94</sup> Both Smith and Alan Simpson responded that it had not been their intention "to impose a new requirement for border crossing cards or I-94's on Canadians."<sup>95</sup> But as I will discuss later, American domestic politics made it difficult to exempt Canada from the legislation.

Canada's outrage at Section 110 was perfectly understandable because it threatened to interfere with the long-standing tradition of Canadians crossing the U.S. land border without a passport or visa, and with only limited delays or inconvenience. Furthermore, only a year and a half before Section 110 had passed the U.S. Congress, on February 25, 1995, President Clinton and Prime Minister Chrétien had signed an "Accord on Our Shared Border" that supported open trade and travel between the two countries. In the area of cross-border travel, the accord was designed to "develop a customs process that supports one of the world's most dynamic trade relationships", and to streamline traveller procedures."<sup>96</sup> Although the two country's executives had signed the 1995 agreement without the involvement of the legislative branches, Canadian Embassy officials in the United States argued that Section 110 "runs counter to the spirit" of the accord.<sup>97</sup> Finally, it was difficult to escape the irony that the United States, which has often hectored Canada to accept some types of globalization pressures such as increased foreign investment and external cultural products, had adopted legislation which would severely limit easy access by Canadians to the United States.

Despite its justified outrage, the decision by the Canadian government to focus its efforts on seeking an exemption from Section 110 indicated that generally it did not wish to get involved with the effects that the law could have on Mexico. But Canada was not totally silent in regard to the possible impact of Section 110 on Mexicans. For example, the Canadian Consul in Los Angeles affirmed Canada's support for the chambers of commerce in San Diego, San Ysidro, and Otay, California, and Tijuana, Mexico, that were protesting against Section 110.<sup>98</sup> Nevertheless, when a Canadian official appearing before the House of Commons standing committee on foreign affairs and international trade was asked to determine whether "an exemption for Canada" would "constitute a form of discrimination towards Mexicans," he responded that "Canada has no views on how the United States should manage its borders with Mexico," and that

"Canadians and Mexicans have always been treated differently because of their very distinct border realities."<sup>99</sup>

Canada's reaction to Section 110 demonstrates the third variable of interest to us in this essay: the asymmetric and incomplete distribution of information as a factor conducive to misunderstandings, tension, and/or conflict. The Canadian government compiled a wealth of statistics to point out convincingly that the implementation of Section 110 on the northern U.S. border would hurt Americans as well as Canadians. For example, Canada noted that the two countries have the largest bilateral trading relationship in the world and that 70 percent of their bilateral merchandise trade is shipped by truck (80 percent of U.S. exports to Canada are transported by truck). Over 30,000 commercial vehicles now move across the Canada-U.S. border every day, and this number is increasing by about nine percent a year.<sup>100</sup> Thus, Canada could effectively point out that delays at the border caused by Section 110 would have a serious impact on the two countries' trading relationship. Despite Canada's ability to compile an array of statistics of this sort to point to the importance of cross-border travel, Canadian officials made little effort to acquire information about the possible effects of Section 110 on the Mexico-U.S. border. Although NAFTA currently has three member countries, Canada chose to continue treating cross-border travel in North America as a purely bilateral matter.

### **B. The Position of Northern U.S. Border States**

A considerable amount of opposition to Section 110 surfaced throughout the United States, particularly among industries and professional groups that benefitted from the cross-border movements of people, goods, and services. Much of the U.S. opposition was coordinated by the Americans for Better Borders in Washington, D.C., a broad-based coalition of regional business groups, state and local governments, and national associations involved in the automotive, shipping, electronics, entertainment, hospitality, and agricultural industries. For example, the members of the coalition include such diverse groups as the American Association for Exporters and Importers, the American Association of Port Authorities, the American Automobile Manufacturers Association, the American Hotel & Motel Association, the American Immigration Lawyers Association, the Distilled Spirits Council of the United States, the Institute of International Bankers, and International Business Ma-

chines. These groups argued that Section 110 would interfere with the cross-border movement of goods and services, and that American economic interests across both the northern and southern borders would be seriously harmed.<sup>101</sup> But the most vocal opponents of Section 110 were concentrated in the northern border states. They include the Can/Am Border Trade Alliance, the Eastern Border Transportation Coalition, the Pacific Northwest Economic Region (PNWER), the Bellingham WA City Council, the Detroit Regional Chamber, the Ambassador Bridge, the Niagara Falls NY Area Chamber of Commerce, and the departments of transportation in New York and Michigan.

There are of course regional differences in the interests of northern U.S. states and Canadian provinces in promoting an open border. For example, exports to Canada generate over 72,000 jobs in key manufacturing industries and over \$4.68 billion in value added for Michigan alone, and this state therefore has considerable interest in maintaining an open border for "just in time" delivery of industrial equipment and parts. The Buffalo region forms part of a high technology, fiber optics, and medical research corridor extending into Canada, and there is a steady flow of tourists that cross the border between Washington State and British Columbia.<sup>102</sup> Despite these regional differences, northern U.S. groups have engaged in coalition behavior to fight Section 110, as when the Bellingham Chamber of Commerce noted in late 1996 that it had already "started to identify potential allies stretching from Alaska and continuing along the northern border to Maine."<sup>103</sup>

Americans have always taken a more tripartite view of North America than Canadians, and northern U.S. opponents sometimes acknowledged that Section 110 would pose problems at southern as well as northern U.S. border crossings.<sup>104</sup> For example, a member of the U.S. House of Representatives from New York asserted that Section 110 "could have a devastating effect on commerce, on tourism, along the Texas border, the California border, and all of the borders across the northern United States."<sup>105</sup> Nevertheless, information flows on border issues in the United States tend to be highly regionalized, and a congressman from Minnesota openly acknowledged that his experience was limited to the northern U.S. border with the United States:

I do not address the United States-Mexico situation because I do not live there, and I do not understand

that problem, but I do understand United States-Canada, and for every individual to have an entry or departure control document is going to, for those 76 million crossings, is going to be extraordinarily complex.<sup>106</sup>

As was the case with Canadian opponents, the opposition to Section 110 in the northern U.S. border states was largely based on asymmetrical information flows and placed more emphasis on seeking an exemption for Canada than on questioning the U.S. legislation in general. For example, an article in the *Bellingham Herald* asserted that the United States Congress had “inadvertently lumped” Canadians “in with all other aliens” when it had passed Section 110, and that “the trade relationship that created the open border between the United States and Canada is unique. It can’t be compared with Mexico or any other country.”<sup>107</sup> Even some national groupings that had adopted resolutions against Section 110, such as the Republican Governors Association and the National Governors’ Association, expressed greater concerns about the effects on Canada-U.S. relations than on Mexico-U.S. relations. For example, the Republican Governors Association passed a resolution on November 22, 1997, calling on “the United States Congress to enact legislation to eliminate any requirement for automated entry-exit control at the Canadian land borders.”<sup>108</sup> But the attempts of Canadian and northern U.S. groups to argue that Canada-U.S. relations were unique and required special treatment elicited a negative reaction from some groups and individuals in the southern and southwestern United States.

### **C. The Position of Southern and Southwestern U.S. States**

While northern U.S. groups were quite unified in their opposition to Section 110, groups in the U.S. South and Southwest remained divided. Supporters of Section 110 expressed concern about illegal immigration from Mexico. They were more numerous in the U.S. House of Representatives than the Senate largely because of the considerable influence of Lamar Smith. In the Senate, Spencer Abraham (R-Michigan) had replaced Alan Simpson as chair of the subcommittee on immigration when the latter had retired in late 1996. Abraham, a strong opponent of Section 110, was in many respects the polar opposite of both Simpson and Lamar Smith.

Abraham's opposition to Section 110 was based on several factors. First, the economy of Abraham's Michigan is highly dependent on freedom of movement across the U.S. border. Indeed, 46 percent of the volume and 40.6 percent of the value of U.S.-Canada trade crosses the Michigan-Ontario border. In 1996 alone, exports to Canada generated over 72,000 manufacturing jobs in the State of Michigan and over \$4.68 billion in value added. The U.S. automobile industry conducts about 300 million dollars worth of trade with Canada every day, and the Detroit automakers also depend on a large volume of trade in automobiles and auto parts with Mexico. A second factor in Abraham's opposition to Section 110 is his ethnic background. Because his grandparents had come to the United States from Lebanon, he has not shared the anti-immigration sympathies of some members of the U.S. Congress. Unlike Simpson, who spoke of the "burden" of immigration, Abraham advocates an open door for people who want to make a "positive contribution."<sup>109</sup> Within the liberal coalition formed against Section 110, leftists have often been more concerned about liberalizing family immigration, while conservatives have been most concerned about freeing business immigration. Abraham is passionately concerned about both. His legislative director has stated that "Spence believes families should be able to reunite, and he believes that immigrants have given the country a big economic edge, especially in high tech."<sup>110</sup> By contrast, Lamar Smith of Texas was a strong supporter of Section 110 as a means of protecting the United States against illegal immigration, drug smuggling, and terrorism. In a letter to the Governor Edward Schafer of North Dakota who opposed Section 110, Smith argued that

Section 110 ... requires the Attorney General to set up an entry-exit control system for aliens at all points-of-entry to the United States – air, land, and sea. Congress believes that such a system is the only effective method available to combat "visa overstayers" .... Only by ascertaining whether aliens have in fact departed can we measure and reduce this threat to the nation's sovereignty.<sup>111</sup>

Lamar Smith also seemed to alter his position on the issue of applying Section 110 to the Canada-U.S. border, which was a shock to Canada and the northern U.S. border states. In December 1996, Smith (along with Alan Simpson) had sent a letter to the Canadian

ambassador reassuring him that, despite the passage of Section 110, "we did not intend to impose a new requirement for border crossing cards or I-94's on Canadians."<sup>112</sup> By February, 1998, Smith's position on Canada had definitely hardened when he wrote:

It is not widely known that ... Canadians are estimated to constitute the fourth highest population of visa overstayers in the United States. Exempting the U.S.-Canada border from the entry-exit control system would leave this problem unresolved. Additionally, many non-Canadians come to the United States through our northern border. Exempting it would leave us with no method to track those who overstay their visas.<sup>113</sup>

Lamar Smith's shifting position resulted at least in part from political pressure to oppose any exemption for Canada in the age of NAFTA, because Mexicans would view this as discriminatory treatment. Thus, a representative from North Carolina stated in a House debate on amending Section 110:

I just find it very amazing that all of these representations are being said about what disruption is going to happen on the Canadian border as if the same disruptions do not happen on the southeastern border and the southern border. There is absolutely no distinction between the northern border and the southern border. The same arguments that apply on the northern border apply on the southern border.... We have turned up pressure on the southern border and people are going around, coming in the northern border as if it is a sieve.<sup>114</sup>

A representative from Texas similarly argued that "first my colleagues want to be tough, then they want to be not so tough on the northern border. Well, my colleagues, it does not work that way.... We do not want to treat Canadians one way and Mexicans a different way."<sup>115</sup> The North Carolina representative (who is an African-American) also argued that the United States "must enforce the laws on an equal basis and do it in a racially color-blind way" with "an immigration policy that does not distinguish between white Canadians and colored Mexicans."<sup>116</sup> He went on to assert that

there have been numerous incidents of alien smugglers bringing in hundreds of illegal immigrants



across the border between Ontario and upstate New York. One of the terrorists on trial for participating in the conspiracy to blow up the Lincoln Tunnel in New York entered the United States from Canada. The Canadian border must be as secure as the southern border. Otherwise, we might as well put a neon light over the Canadian border inviting immigrants to come across it with impunity.<sup>117</sup>

While support for Section 110 was strongest in the U.S. House of Representatives, some senators in southwestern states such as Diane Feinstein (D-California) also endorsed the measure. In Feinstein's view, Section 110 would reduce illegal immigration and facilitate anti-drug efforts on the U.S.-Mexico border, and she agreed with some of her colleagues in the House that Canada should not be exempted from the legislation.

Despite the support for Section 110 among this region's members of the U.S. Congress, not all southern and southwestern legislators approved of the measure. Indeed, a Democratic congressman from San Diego went so far as to argue that the passage of Section 110 was an indication "of the ignorance and stupidity of Congress, and a complete absence of familiarity about what the border is."<sup>118</sup> Some governors from southwestern border states such as Texas and Arizona also expressly opposed Section 110, arguing that it would have a severe impact on cars, trucks, and people crossing the border to conduct business and do their shopping.<sup>119</sup> As with the northern groupings, business interests dependent on trade and commercial linkages across the southern U.S. border with Mexico strongly opposed the legislation. For example, members of "Americans for Better Borders," which has organized the U.S. opposition to Section 110, include such groupings as the Greater San Diego Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, the U.S. Mexico Chamber of Commerce, and the southern-based Border Trade Alliance.<sup>120</sup> Many newspapers near the southern U.S. border have been supportive of these crossborder commercial interests. Thus, the *Tucson Citizen* quoted a Nogales, Arizona, merchant as stating that "the more steps we keep imposing, the harder it gets to persuade the Mexican customer to keep coming to the U.S."; the *San Diego Union-Tribune* warned that "unless modified," Section 110 would "severely constrict legitimate cross-border travel and, in the process, put a chokehold on the burgeoning economic growth of the San Diego-

Tijuana region"; and the *Union-Tribune* also criticized Senator Diane Feinstein's support of Section 110, arguing that "California and San Diego need Feinstein to start building new bridges to Mexico, not dynamiting existing ones."<sup>121</sup>

In summary, governmental and non-governmental actors in the southern and southwestern U.S. states were more divided in their position on Section 110 than northern U.S. groups, and in cities close to the southern border such as San Diego and Nogales business interests expressed considerable opposition to the measure.

#### **D. The Mexican Position**

Mexico, like Canada, strongly opposed Section 110 when it was enacted in Fall, 1996. Indeed, Jorge Bustamante, a recognized expert on Mexican immigration to the United States, contends that "the American Congress produced a number of laws in 1996 with harmful effects for Mexicans, greater than at any other moment in the history of relations between the two countries."<sup>122</sup> The Mexican ambassador to the United States wrote a letter to the chair of the U.S. Senate subcommittee on immigration indicating that the congestion caused by the implementation of Section 110 would "disrupt the intense trade relationship" of the two countries and would hinder the development of border communities. He also drew parallels between the situations of Mexico and Canada, arguing that Mexico "shares with the Canadian government the belief that ... [Section 110] would contravene our free trade ideals."<sup>123</sup>

Hostility to Section 110 in Mexico, as in Canada, was based partly on what Mexicans viewed as hypocritical behavior by the United States. Beginning in the 1980s, it had exerted increased pressure on Mexico to liberalize its economy, and this pressure combined with Mexico's trade and indebtedness problems caused the government to adopt more outward-oriented policies. Thus Mexico began to increase its market orientation and decrease state intervention in the economy. Major policy landmarks as a result of these economic changes were Mexico's accession to the General Agreement on Tariffs and Trade (GATT) in 1986, and of course Mexico's decision to seek a free trade agreement with the United States which resulted in the formation of the NAFTA on January 1, 1994.<sup>124</sup> Section 110, which followed soon afterwards, was an indication to some of

the liberal paradox – the notion that industrial democracies push nations to embrace free trade and investment, and warn them that their failure to open their borders to free trade will result in slower economic growth and less World Bank and IMF funds. On the other hand, industrial nations complain that now open developing economies are sending workers over industrial country borders.<sup>125</sup>

Another example of hypocritical behavior, in the Mexican view, was that some Americans benefitted from illegal immigration even while they criticized it. One of the most blatant examples was the 1994 campaign of Michael Huffington for a U.S. Senate seat in California. Although Huffington's campaign focused on the illegal immigration problem, it was disrupted by the disclosure that the candidate himself had hired an undocumented immigrant. Other disclosures of hiring illegals were made in regard to Huffington's campaign opponent as well as two nominees of the Clinton administration for Attorney General.<sup>126</sup> The United States has not been alone in this regard. The argument has been made that "European governments prefer that immigrants remain illegal ... so that they fill seasonal and low wage jobs but are less likely to become residents since they cannot easily gain access to public housing or social services."<sup>127</sup>

Although Mexicans were angered by Section 110, unlike Canadians they were concerned about many other aspects of U.S. immigration law that impacted negatively on them. Thus, Bustamante has argued that the 1996 IIRIRA with its Section 110

is only one of many [U.S. laws] which include provisions that attack the rights or interests of Mexican citizens.... Even if this law magically disappeared, the others would still remain, such as the ones on welfare, the budget, health, anti-terrorism and others in which very aggressive measures have been approved against Mexicans. My argument is that the base problem is not in the new immigration law so much as the process whose principal arena has been the U.S. Congress.<sup>128</sup>

As with Canada and the United States, Mexican groups with vested interests in cross-border commerce expressed particularly strong concerns about Section 110. For example, the chamber of

commerce in Tijuana, the Mexican city with the greatest number of border crossings, warned that Section 110 would cause massive traffic jams and serious consequences for trade on both sides of the border; and the sixteenth Conference of Mexico-U.S. Border Governors agreed to urge the U.S. Congress to suspend the implementation of Section 110. Furthermore, cross-border alliances have occurred on the Mexico-U.S. border as they have on the Canada-U.S. border. Merchants from the municipality of Tijuana and the County of San Diego, for example, formed a common front to defend themselves against Section 110, and the Commercial Border Alliance (*Alianza Comercial Fronteriza*) unites merchants on both sides of the California-Mexico border.<sup>129</sup> The University of California, San Diego-based San Diego Dialogue also decided in 1991 to focus its research and consultation on the border, and while it had only one member from Tijuana at that time, by 1997 it had acquired fourteen members from the Mexican side of the border.<sup>130</sup> Thus, subnational alliances designed to make the boundaries more permeable are continuing to develop in both the Mexico-U.S. and Canada-U.S. border regions.

## VI. PROPOSED LEGISLATION TO COUNTERACT SECTION 110

The opposition to Section 110 among a wide range of groups in the United States, Canada, and Mexico inevitably had an influence on the U.S. Congress, and several proposals emerged to delay, counter-veil or even repeal the legislation. In September 1997, three members of the Congress (one representative and two senators), all from northern U.S. border states, introduced very similar bills which explicitly sought to exempt Canada from the Section 110 legislation.<sup>131</sup> For example, Bill S 1205 introduced by Senator Patty Murray (D-Washington State) called for amending the 1996 Act "to clarify that records of arrival or departure are not required to be collected for purposes of the automated entry-exit control system developed under section 110... for Canadians who are not otherwise required to possess a visa, passport, or border crossing identification card." These three bills failed to receive congressional approval largely because they explicitly proposed to treat Canada as an exception in the face of opposition from other congressional members.

Two months later, Representative John LaFalce (D-New York) and Senator Spencer Abraham (R-Michigan) introduced virtually identical bills in the two chambers referred to as the "Border Im-

provement and Immigration Act of 1997" (Bill H.R. 2955 in the House, and Bill S. 1360 in the Senate). It stipulated that Section 110's automated entry-exit control system should not apply at land borders and should not apply at any borders (land, sea, or air) for aliens for whom the United States had already waived visa requirements. Thus, Section 110 would not apply at land borders for both Canadians and Mexicans, and Canadians would in fact not be subject to the Section 110 provisions at *any* borders because they were not subject to visa requirements. Although these bills sought to maintain the *status quo* for Canadians, and thus give them more favorable treatment than Mexicans, Canada was not specifically mentioned in the legislation.

As Senator Abraham explained, the bills sought to delay any application of Section 110 to U.S. land borders because it was impossible to know whether it could be implemented at an affordable cost without creating serious congestion and backlogs. Thus, a second provision of the Abraham/LaFalce bills was that Congress should not consider expanding the entry-exit control system until it had received a detailed report on the implications in terms of cost and feasibility. Although the bills directed the Attorney General to issue a feasibility report to the Congress concerning the development of an entry-exit control system, the clear intent of the proposed legislation was to dispense with Section 110. A third provision of the two bills was that the U.S. INS and U.S. Customs should hire more personnel for border inspections to deal with the backlogs and delays that were already occurring. Even without new controls, Senator Abraham argued, there were unacceptable delays already at many border crossing points.<sup>132</sup>

Although the Abraham and LaFalce bills were virtually identical, they were treated very differently by the two legislative chambers. Senator Abraham included some minor changes in his bill in response to feedback received from other senators, and his "Border Improvement and Immigration Act of 1998" was then referred to the Senate judiciary committee. In April 1998, the committee approved it with some further revisions, and only four senators dissented.<sup>133</sup> Later the Senate appropriations committee passed an even stronger measure - the Commerce-State-Justice bill - that called for full repeal of Section 110. (The appropriations committee could deal with the Section 110 issue because of the extra expenses that its implementation would involve.) In July 1998, the full Senate approved both the

proposed repeal of Section 110 attached to the Commerce-State-Justice appropriations bill, and the Abraham bill.<sup>134</sup>

The Senate approved both bills counteracting Section 110 in part to put pressure on the House to take similar action with the LaFalce bill. However, unlike Spencer Abraham, who as chair of the Senate immigration subcommittee had facilitated the referral of his bill to the full Senate, Lamar Smith as chair of the House immigration and claims subcommittee ensured that the LaFalce bill was *not* referred to the full house. Unlike the Senate case, the House appropriations committee also did not act on the Section 110 issue because the chair of the House commerce-state-justice appropriations subcommittee – Hal Rogers (R-Kentucky) – shared Lamar Smith’s sympathies in favor of Section 110. Thus, the chairs of critical House subcommittees prevented the full House of Representatives from even considering and voting on bills to counteract Section 110. Instead, the House enacted a bill (H.R. 2920) that simply called for delaying the implementation of Section 110 until September 1999. Although this bill provided that the entry-exit control system shall “not significantly disrupt trade, tourism, or other legitimate cross-border traffic,” there was no assurance that disruptions would not occur.<sup>135</sup>

It was evident that the Senate and House would have to adopt compromise legislation in conference. One of the options the conference committee considered was to delay the automated entry-exit control system on the southern U.S. border for only one year, while indefinitely delaying or removing the applicability of the control system to the northern U.S. border. But the two senators from Arizona wrote a letter to the conferees arguing that this option would favor Canada and discriminate against Mexico. Instead they urged the conferees to delay the implementation of Section 110 at *both* borders for thirty months rather than the 12 months proposed by the House.<sup>136</sup> The conferees adopted this suggestion, and on October 20 and 21, 1998 the House and Senate enacted compromise bills delaying the implementation of Section 110 until March 30, 2001. In 1999, opponents of Section 110 made renewed efforts to repeal the legislation, but the outcome of these efforts remains uncertain. As of this writing, Section 110 has not been revoked and it still continues to pose a serious threat to cross-border travel in North America.

## VII. CONCLUSION

Policy changes in North America to promote freer trade and capital movements have not led to comparable efforts to promote freer cross-border travel. Other than some limited provisions in chapters 12 and 16 of NAFTA regarding the cross-border movement of business and professional people, NAFTA devotes no attention to facilitating cross-border travel. On the contrary, the Section 110 issue demonstrates that there are strong pressures in the U.S. Congress to *increase* cross-border restrictions in North America. Migration is, nevertheless, "one of the constitutive processes of globalization" today, and it is becoming increasingly difficult to separate it from other issues such as trade, foreign investment, and capital movements.<sup>137</sup> Canadians and Mexicans resent the fact that the U.S. Congress is threatening to impose the Section 110 immigration measures at the same time that it pressures them to open borders to U.S. exports, foreign investment, and cultural products. Many members of Congress voted for Section 110 without fully realizing the consequences. Although it is aimed at illegal immigration to the United States, it would adversely affect cross-border travel for *any* purpose, including tourism, shopping, commuting, and visiting family and friends. Section 110 would also interfere with cross-border trade in the automotive and other important industries. Despite these unintended consequences, a variety of societal and governmental factors contributed to an anti-immigration atmosphere conducive both to the passage of Section 110 and to congressional reluctance thus far to repeal the legislation.

Three factors influencing foreign policy identified by Helen Milner have contributed to tensions and conflict over the Section 110 issue: the differences among the players' policy preferences; the nature of political institutions; and the asymmetrical distribution of information.<sup>138</sup> In regard to the first factor, the Section 110 issue reveals that there is a wide range of differences in policy preferences concerning cross-border travel in the United States. Attitudes toward immigration tend to fluctuate along with changes in the economic positions of national and subnational governments, and this has been especially the case for California, where about 40 percent of the U.S. illegal immigrant population resides. California reacted to severe recessionary conditions in the early 1990s by approving Proposition 187, which was designed to prohibit access of illegal aliens to a variety of public services such as education and non-

emergency health care. The shift in California's position on immigration clearly had a major impact on the policies of the U.S. federal government. Special interest groups such as FAIR, with its long-term policy preference to limit immigration severely, were also able to play upon fears of legal as well as illegal immigration and exert influence on the U.S. Congress, an additional factor explaining the passage of Section 110.

When the negative implications of Section 110 became apparent to various groups with vested interests in freer cross-border travel, they lobbied strongly to prevent its implementation. Since many people have strongly-held views about sensitive issues such as immigration, those who favored and those who opposed Section 110 remained unwilling to compromise. Canadians and Mexicans strongly opposed to Section 110 formed cross-border alliances with like-minded groups in the United States to counteract the legislation. In response to these internal and external pressures, the U.S. Congress eventually decided to delay its implementation until March 30, 2001, but not to repeal it. Public opinion surveys show that sentiments against immigration have become more widespread in many industrial countries in recent years, and it is likely that there will be further legislation in the U.S. Congress to monitor and/or restrict cross-border travel.

The nature of political institutions in the United States also helps to explain the passage of Section 110. In the U.S. federal system, state and local governments in the United States bear the major expense of delivering housing, education, and health services to immigrants, refugees, and illegals that the federal authorities do not fully cover. As economic problems increased in such states as California in the early 1990s, they were less willing to provide these social services. Thus, the federal division of responsibilities in the United States contributed to the feeling of some Californians that Section 110 would alleviate the state's financial problems. At the federal level, the U.S. Congress has primary responsibility for debating and formulating immigration policy, and the immigration issue is therefore subject to a highly public process influenced by a wide range of local interests. The judiciary committees of the U.S. Congress also have jurisdiction over immigration matters, rather than the foreign affairs committees which are generally more attuned to the sensitivities of other countries. American foreign policy on trade issues has often been marked by a struggle between the White House,



which represents transnational actors interested in a more open economy, and a Congress which reflects more protectionist and regional interests. This has been particularly evident in recent years, with U.S. President Bill Clinton's ongoing difficulties in winning "fast track" approval for negotiating an expansion of NAFTA. Similarly, the Congress has been more inclined than the president to represent local and inward-looking attitudes in its policies on cross-border travel.

For somewhat different reasons, both Canada and Mexico have found it difficult to deal with the U.S. Congress, and Section 110 has been no exception.<sup>139</sup> In Canada's parliamentary system, a prime minister with a government majority normally can speak and act on behalf of the House of Commons. For many years, Canada therefore had difficulty coming to terms with the Congress's high-profile role in the U.S. presidential system of government, and the Congress continues to present problems for Canadian negotiators.<sup>140</sup> Since the Congress in Mexico's presidential system has been far less powerful *vis-à-vis* the executive than is the case in the United States, Mexicans have also had difficulties in dealing with the U.S. Congress. Thus, Jorge Bustamante has observed that

Mexicans ... have never known how to fight against the American federal Legislative Houses, unlike countries such as Japan, Korea, Singapore or Israel. The Mexican government has not had such serious problems with the [U.S.] Executive as it has had, has, and will continue having with its Legislative Houses.... This body is composed of members whose political survival depends more on their local structures than on their federal power structures, something substantially different from the case of Mexico.<sup>141</sup>

Despite the difficulties Canada and Mexico have had in dealing with the U.S. Congress, their success in joining with domestic U.S. groups to oppose the implementation of Section 110 indicates that are becoming more adept at forming cross-border linkages with like-minded groups in the United States. Nevertheless, they were unable to bring about a repeal of Section 110 and could only settle for a delay in its implementation.

The asymmetrical pattern of information flows is in some respects the most important variable explaining the persistent tensions and conflict over the Section 110 issue. Members of the U.S.

Congress beholden to local interests often do not see the broader picture, and those who represent constituencies in states removed from the border may fail to realize how important cross-border transactions in general can be to the United States. For example, while most U.S. states on the Canadian border are highly dependent on trade with Canada, about fifty percent of U.S. exports to Canada are produced in 14 states that are *not* on the border with Canada. The delays caused by Section 110 could have a severe impact on the exports of these non-border states.<sup>142</sup> Even in border states such as Washington, state legislators in the capital often lack awareness of the importance of cross-border transactions to their border communities of Bellingham and Blaine. The same can be said for California state legislators in Sacramento *vis-à-vis* communities close to the border such as San Diego, San Ysidro, and Otay. Thus, the passage of Section 110 resulted partly from congressional inattention to the possible negative effects of it on the United States as well as on Canada and Mexico. The U.S. Congress is a large, unwieldy body, and in view of the emphasis members place on local interests, the statement by the chair of the U.S. Senate judiciary committee that the Congress had passed Section 110 in error because "its implications were not fully understood and debated" becomes more understandable.<sup>143</sup>

There were also fundamental differences in outlook between northern, southern, and southwestern sectional interests in the United States over the Section 110 issue, and the linkages between these interests and two adjacent foreign countries in some respects merely widened the gap between the various U.S. regions. Of critical importance was the unity of purpose among Canada and the U.S. northern border states, and the more divided position of U.S. southern and southwestern states.

Although Canada's outrage over Section 110 was fully justified, the Canadian government focused almost all of its efforts on seeking an exemption for Canada rather than on questioning Section 110 legislation in general. Most northern U.S. border states also directed their efforts to seeking a Canadian exemption. No one would claim that the Canada-U.S. and Mexico-U.S. border situations are similar. There is nothing comparable on the northern U.S. border to the magnitude of the illegal immigration problem on the southern U.S. border. In 1996, for example, the INS estimated that about 2.7 million of the illegal aliens in the United States were from Mexico, more than

from any other country. Illegal aliens from the second and third largest sources, El Salvador and Guatemala, also normally enter the United States across the southern border. Nevertheless, in pressing for an exemption, the Canadian government and northern U.S. states were not sufficiently attuned to the fact that Section 110 would have highly detrimental effects on trade and on non-immigrant travellers at the southwestern as well as the northern border.

A number of years ago a noted Canadian foreign policy analyst wrote that "there are arguments for strengthening mutually beneficial links between Canada and Mexico, but not for entwining these in the serious and quite different problems between the United States and Mexico."<sup>144</sup> Although this may have been good advice in earlier years, it is far less relevant in an age of NAFTA for several reasons. First of all, many Mexicans feel that the United States discriminates against them whenever they cross the U.S. border, and their basis of comparison within the NAFTA area is, of course, Canada. The director of the U.S./Mexico Border Project of the American Friends Service Committee in San Diego explained these concerns when he stated that "the U.S.-Mexico border should thrive in a demilitarized, noncoercive atmosphere, as the Canadian border does, so that a double standard does not exist between the two borders."<sup>145</sup>

Secondly, in view of Mexican charges of discrimination, many members of Congress who are not from northern U.S. border states are now less likely to accept new laws which give more favorable treatment to Canadians than to Mexicans. The simple fact is that the Canada-U.S. border is much more significant for Canada than it is for the United States. Almost all of Canada is a "borderlands society" in the sense that about 75 percent of the Canadian population lives within 150 kilometers of the U.S. border. By contrast, the American population is about nine times the size of Canada's and is fairly evenly dispersed throughout the country. Unlike the Canadian situation where major cities such as Vancouver, Toronto, and Montreal are close to the border, few of the largest U.S. cities are near Canada. Many Americans are therefore not attuned to the special circumstances of Canada and the northern U.S. border states.<sup>146</sup> Furthermore, those members of Congress who are less favorably inclined towards Canada sometimes point to the fact that there are problems on the Canada-U.S. as well as the Mexico-U.S. border. For example, although the INS estimates that Mexico is the largest source of illegal aliens, it estimates that Canada is the fourth largest source, account-

ing for about 120,000 illegal aliens in the United States as of 1996. Furthermore, Canada has received a considerable amount of bad publicity in the U.S. press recently for the amount of drugs that cross the border.<sup>147</sup> Canadian officials have pointed out that drugs move across the border in both directions, with cocaine going primarily south-north and heroin going north-south.<sup>148</sup> But given the asymmetry of information flows, this message is not necessarily received. Focusing the debate over Section 110 so heavily on an exemption for Canada was ill-advised, because all sides should have given more attention to examining the defective aspects of Section 110 in general. Over twenty years ago a Canadian historian wrote that Canadians "deny Mexico its place in North America, so absorbed have they been with their own development and the power and influence of their immediate neighbour, the United States."<sup>149</sup> In the age of NAFTA, the Section 110 issue shows that Canadians must become more attuned to Mexican attitudes and concerns.

Congressional supporters of Section 110 in the southern and southwestern U.S. states also were affected by asymmetrical information flows which contributed to their own brand of "tunnel vision". In their eagerness to confront the illegal immigration problem, they did not sufficiently explore whether Section 110 would achieve the desired objective, and they underestimated the problems that would result for the many Mexicans (and Americans) crossing the border who are not illegal immigrants. Furthermore, they underestimated the economic problems that Section 110 would create for border communities within the southwestern states. Although several members of Congress from Texas and California were among the strongest supporters of Section 110, the two rank first and second, respectively, among U.S. states in terms of their volume of trade with Mexico. A 1992 survey of those crossing the Mexico-U.S. border also demonstrates how much U.S. border communities rely on relatively free cross-border travel. A conservative estimate is that Tijuana area residents spend \$2.8 billion in the United States annually for shopping, food, medical and dental expenses, school tuition and books, cultural events and entertainment, and gasoline. Although some of the largest expenditures are made in more distant locations such as Los Angeles, the great majority of purchases are made in U.S. communities in the immediate border region. More Mexican residents cross the border into California for shopping than for any other single purpose, and Mexican residents take about one and a half

million trips into the San Diego area each month primarily for shopping purposes. Cross-border shoppers pay over 100 million dollars a year in sales taxes alone on the goods they purchase in San Diego County.<sup>150</sup> Thus, by hindering cross-border travel, Section 110 would have serious effects on southwestern U.S. border communities.

As supporters of Section 110, some southern and southwestern members of Congress revealed a lack of awareness of their states' dependence on trade with Canada. For example, some representatives and senators from California, Texas, and North Carolina strongly criticized the view that freedom of movement across the Canada-U.S. border should be preserved. Ironically, among states which are not on the northern U.S. border, California, Texas, and North Carolina, rank third, fourth, and seventh, respectively, in terms of their volume of exports to Canada.<sup>151</sup> Finally, those in Mexico who opposed Section 110 could benefit from increased awareness of Canada-U.S. border realities. Just as Canadians often devote little attention to Mexicans, Mexicans tend to lack awareness of Canadians, and the Mexican term "*norteamericano*" has traditionally referred only to Americans. It is surprising how often both policy-makers and academics in the Mexico-U.S. border area refer to the NAFTA as a U.S.-Mexico agreement, giving only passing notice to Canada.

In view of the policy preferences of the various actors, the nature of U.S. political institutions, and the asymmetrical distribution of information, what is likely to happen with Section 110? Will it be implemented as scheduled on March 30, 2001 or will there be further delays? Will Section 110 be amended, or will it be repealed? As of this writing, opponents of Section 110 are again attempting to weaken or revoke the legislation in the U.S. Congress. On March 25, 1999, Spencer Abraham (R-Michigan) introduced legislation in the U.S. Senate to amend Section 110 (S. 745), and later on April 29 Fred Upton (R-Michigan) introduced virtually identical legislation in the House of Representatives (H.R. 1650).<sup>152</sup> Opponents of Section 110 believe it is critical that these bills be voted on and passed in during the Fall because it will be more difficult to revoke Section 110 in 2000, an election year.<sup>153</sup> This time it may be more difficult for Lamar Smith to prevent a vote in the U.S. House of Representatives, because Upton's Bill H.R. 1650 has been referred to the House ways and means committee as well as to Smith's immigration and claims subcommittee (in 1997, the LaFalce bill had been referred only to

Smith's subcommittee). Even if Smith's subcommittee again tries to prevent the legislation from reaching the full House, the ways and means committee could now theoretically bypass Smith's subcommittee and refer the bill to the House. Nevertheless, Lamar Smith has considerable influence in the House on immigration issues, and it is uncertain that the ways and means committee would bypass him on the Section 110 issue.<sup>154</sup> Smith has expressed his intention to continue fighting to implement Section 110, and in May 1999, he distributed a letter to all members of the House indicating that Section 110 was necessary "to protect our country against visa overstayers, drug smugglers, and terrorists" crossing the border from Canada as well as Mexico.<sup>155</sup>

The debate in the current Congress is not likely to change much as a result of last November's election. There are only 8 new senators out of 100 and 40 new representatives out of 435, and neither group is likely to exercise much influence over this issue. As was evident from the earlier debate on Section 110, the outcome will be determined by a small group of major players, all of them Republicans because of that party's majorities in both congressional chambers. Pivotal actors of course are the chairs of the two immigration subcommittees – Lamar Smith and Spencer Abraham. Other important players are the chairs of the commerce-justice-state appropriations subcommittees, Hal Rogers in the House and Judd Gregg in the Senate, the Senate majority leader, Trent Lott, the speaker and majority leader of the House, Dennis Hastert and Dick Armey, and the chair of the House ways and means committee, Bill Archer.<sup>156</sup>

If Section 110 is not weakened or revoked in 1999-2000, opponents will have to be concerned about the outcome of the federal elections in 2000. Spencer Abraham's role in opposing Section 110 has been pivotal, and he may encounter some difficulties when he faces re-election. The Federation for American Immigration Reform (FAIR) has vowed to defeat him in the election, and Dr. John Tanton, its founder, is "predicting that Senator Abraham will face a single-issue anti-immigration candidate when he runs for re-election."<sup>157</sup> The impeachment trial of President Bill Clinton could also adversely affect Abraham's electoral chances. Although some political leaders and observers argue that the U.S. public will have forgotten about the positions taken by candidates on the Clinton issue long before November 2000, this may not be the case for Abraham's home state of Michigan. President Clinton carried Michigan easily in 1996, and

Abraham may be one of those Republican senators paying the price for voting to convict Clinton on the basis of both perjury and obstruction of justice.<sup>158</sup> If Abraham is defeated in the next federal election, the opponents of Section 110 will lose their most important ally in the U.S. Congress.

Despite the concerns of the opponents of Section 110, there are several reasons to believe that Section 110 will not be implemented in its current form. First, it is difficult to imagine that it would ever be implemented in its present form on the Canada-U.S. border because of the extraordinary degree of economic interdependence of the Canadian and U.S. economies and the long history of relatively free movement of people between the two countries. Nevertheless, Canada originally assumed for these reasons that Section 110 was applied to it in error, and that the U.S. Congress would promptly amend the legislation to exempt Canadians. Since this has still not occurred, northern opponents of Section 110 have become more aware that an explicit exemption for Canada in the age of NAFTA is not the most likely outcome. Since the implementation of Section 110 is a possibility that cannot be discounted, interested groups in Canada and the U.S. border states are taking no chances and working vigorously to oppose Section 110.

Secondly, it is quite likely that Lamar Smith will not continue as chair of the House immigration subcommittee after the 2000 elections. When Newt Gingrich became speaker of the House, one of the agreements was to limit all House leaders, especially those chairing sub-committees, to six-year periods. Since this agreement was made in 1994, Lamar Smith's term as House immigration subcommittee chair should expire in 2000. Nevertheless, there have been subsequent changes in the House speakership and it is possible that Smith's term could be extended by a waiver. Moreover, the Republican Party will feel the need to make amends with the rapidly growing Hispanic electorate before the 2000 elections, not only in the U.S. Southwest but also in some other areas of the United States. Section 110 was a major factor contributing to the alienation of the Hispanic electorate from the Republicans, and this might prevent U.S. congressional leaders from pressing hard to implement the measure. Thirdly, one of the most important factors that might preclude the implementation of Section 110 is the practical issue of cost. It would require an enormous increase in expenditures for new resources – the INS estimates \$2-3 billion in infrastructure costs

alone, not include operating costs. Even if the INS managed to produce a data-bank of people overstaying their visas, this would often not indicate where these people were to be found, and therefore would not lead to many apprehensions and removals. As previously mentioned, Section 110 would also have costs in terms of slowing down the three countries' trading relationship; and then of course there are the more intangible costs in terms of maintaining good relations with the United States' two immediate neighbors. In view of all these costs, Section 110 is unlikely to be implemented in its current form; but it is also unlikely that the provisions of Section 110 will be dropped entirely. The most likely outcome is that some weakened version of Section 110 will eventually emerge, and that the pressures for more restrictive legislation will periodically reappear along with changes in the U.S. economy.<sup>159</sup>

While scholars and policymakers in industrial states are engaged in debates over many aspects of globalization, the Section 110 issue shows that cross-border travel and immigration are among the most uncomfortable issues to examine directly and in a forthright manner. The cross-border movement of people is one area where there is often a more generalized negative societal reaction to globalization, and in which there are many "discontents," including both those who wish to exclude outsiders and those who feel that they are unfairly excluded. In an age of globalization, it is time for academics and policymakers to devote more study to the development of rational, non-biased policies by states toward the cross-border movement of people.

One could argue that this suggestion is unrealistic because the U.S. Congress will remain sensitive to constituency interests, and the electoral appeal of not being "soft" on immigration will continue to be strong. But this problem could be remedied in part by changing the institutional policymaking focus in the United States. At one time the Congress had full responsibility for the setting of U.S. tariffs, but this changed as a result of Congress's 1930 Smoot-Hawley Tariff Act, which increased U.S. *ad valorem* rates on dutiable imports to 52.8 percent, "the highest American tariffs in the twentieth century."<sup>160</sup> The 1930 tariff resulted partly from the fact that members of Congress do not have national constituencies and are far more susceptible than the president to local protectionist pressures. Other countries rushed to retaliate against the Smoot-Hawley tariff with their own import barriers, and from 1929 to 1933 U.S. exports fell from \$488 million to



\$120 million. In efforts to reverse this damage, the U.S. Congress passed the Reciprocal Trade Agreements Act (RTAA) in 1934. The RTAA marked a significant turning point, authorizing the President to establish “bargaining tariffs” as a result of negotiations with foreign states.<sup>161</sup> As a large, diverse body highly susceptible to special interests, the Congress itself realized that it had to transfer some tariff-setting authority to the president. As regional and global interdependence in trade increased, trade issues could no longer be kept hostage only to domestic interests.

Similarly, with the enactment of NAFTA and the dramatic increase in cross-border travel in North America, issues affecting these movements such as the Section 110 legislation can no longer be kept “hostage” largely to domestic interests. As is the case with trade, it may be advisable to shift some policymaking authority on immigration issues from the U.S. Congress to the executive branch. Although delegating some of its authority over immigration policy to the president, Congress would (as it does in trade policy) retain the final ability to give or withhold authority in the immigration area. Another possible institutional change would be to shift some responsibility for immigration issues from the judiciary to the foreign affairs committees in the U.S. Senate and House of Representatives because they are more sensitive to international attitudes and concerns. A third possible institutional change would be to delegate more decision-making power over cross-border issues to regional areas on both the Canada-U.S. and Mexico-U.S. borders. The unintended consequences of Section 110 for various border-crossing points resulted largely from the fact that policy was made nationally with little knowledge by most congressional members of local border realities. In fact, “differences among ports-of-entry in terms of needs, challenges, priorities, etc., make it difficult to generalize even about the entire length of a single border, much less about both borders.” Although the most general U.S. border policies should be determined nationally, different regions and ports-of-entry along both borders should be permitted “to set their own priorities and to develop and apply tools that respond to the challenges and opportunities that the region presents.”<sup>162</sup>

Even if these institutional changes were to take place, the reality is that the U.S. Congress will continue to play a major role with regard to immigration and other cross-border travel issues. Information is highly regionalized in the U.S. Congress on a wide range of cross-

border issues, with congressional members on the Canadian and Mexican borders, and those removed from both border areas having a diversity of perceptions and knowledge about the issues. Only through education and a wider dissemination of information can knowledge become less regionalized and a more genuinely national dialogue develop in the Congress regarding highly contentious issues such as immigration and cross-border travel. Such a dialogue is necessary because of increased interdependence between the United States, Canada and Mexico under NAFTA, and because it is no longer possible to separate the issue of cross-border travel from other issues such as international trade, foreign investment, capital flows, and international development in a globalizing world.

## ACRONYMS

ABLI	American Business for Legal Immigration
FAIR	Federation for American Immigration Reform
GATT	General Agreement on Tariffs and Trade
ILO	International Labor Organization
IMMACT	Immigration Act of 1990
IMF	International Monetary Fund
INS	Immigration and Naturalization Service
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
ILO	International Labor Organization
IMF	International Monetary Fund
IMMACT	U.S. Immigration Act (1990)
INS	U.S. Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act
LDCs	less-developed countries
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
PACE	Peace Arch Crossing Entry
PNWER	Pacific Northwest Economic Region
R & D	research and development
RTAA	Reciprocal Trade Agreements Act
SAW	Special Agricultural Worker
UNHCR	United Nations High Commissioner for Refugees
VWPP	Visa Waiver Pilot Program
WTO	World Trade Organization

## NOTES

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<sup>1</sup> Malcolm Waters, *Globalization* (London: Routledge, 1995), p. 89.

<sup>2</sup> Michael J. Trebilcock and Robert Howse, *The Regulation of International Trade* (New York: Routledge, 1995), p. 367.

<sup>3</sup> "Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Section 110.a.1 Automated Entry-Exit Control System," *U.S. Congressional Record - House*, p. H11787, September 28, 1996.

<sup>4</sup> *Ibid.*, Section 110.a.2, p. H11787.

<sup>5</sup> "Border Nightmare: Two-Way Inspections Would be a Disaster," *The San Diego Union-Tribune*, April 5, 1998, p. G-2.

<sup>6</sup> The arguments of critics are found in a wide range of sources. For example, see Stanley Mailman and Stephen Yale-Loehr, "The Price of Tracking Overstays," *New York Law Journal*, 23 February, 1998, pp. 3 & 5; Americans for Better Borders, "Section 110: Myths and Realities," <http://www.uschamber.org/policy/abb/myths.htm>; Canadian Embassy, Washington, D.C., "Canada's Position on the Illegal Immigration Reform and Immigrant Responsibility Act of 1996," <http://www.cdnemb-washdc.org/section110/immig.html>.

<sup>7</sup> Americans for Better Borders, "Section 110 at a Glance," <http://www.uschamber.org/policy/abb/glance.html>

<sup>8</sup> Bruce Chapman, "Immigration Bill Will Treat Canadians Like, Well, Aliens," *Seattle Post-Intelligencer*, 6 December, 1996; interview with Greg Boos in Bellingham, Washington, 9 April, 1998. Mr. Boos is extremely knowledgeable about the Section 110 issue.

<sup>9</sup> Remarks by Senator Spencer Abraham (R-Mich.) at the Introduction of Bill S. 745, the "Border Improvement and Immigration Act of 1999", *Congressional Record - Senate*, 106<sup>th</sup> Congress, 1<sup>st</sup> Session, 25

March 1999, p. S3477; U.S. Senate, 105<sup>th</sup> Congress, 2<sup>nd</sup> Session, "The Border Improvement and Immigration Act of 1998," *Report* presented by Senator Orrin G. Hatch, June 1, 1998, p. 10; Embassy of Canada, Washington, D.C., "Section 110 Spells Trouble for Tourism, Trucking and Trade," <http://www.cdnemb-washdc.org/section110/sect.html>.

<sup>10</sup> See Stephen Blank, "The Emerging Architecture of North America," in A.R. Riggs and Tom Velk, eds., *Beyond NAFTA: An Economic, Political and Sociological Perspective* (Vancouver, B.C.: The Fraser Institute, 1993), pp. 22-35.

<sup>11</sup> Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984), pp. 51-52.

<sup>12</sup> Helen V. Milner, *Interests, Institutions, and Information: Domestic Politics and International Relations* (Princeton, NJ: Princeton University Press, 1997), p. 8. On the relationship between cooperation, competition, and conflict see also Theodore H. Cohn, *The International Politics of Agricultural Trade: Canadian-American Relations in a Global Agricultural Context* (Vancouver: University of British Columbia Press, 1990), pp. 16-31.

<sup>13</sup> Letter from Raymond Chrétien, Canadian Embassy, to the Honourable Lamar S. Smith, Chairman, House Immigration & Claims Subcommittee, 16 December, 1996; Mexican Ambassador, quoted in Mailman and Yale-Loehr, "The Price of Tracking Overstays," p. 5; Senator Edward Kennedy and Governor George Bush, quoted in Americans for Better Borders, "Leading Voices Speak Out Against Section 110," <http://www.uschamber.org/policy/abb/voices.html>.

<sup>14</sup> Representative Earl Pomeroy (D-North Dakota) to House of Representatives debate on Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Amendment, *Congressional Record - House*, 9 November, 1997, p. H10572.

<sup>15</sup> Saskia Sassen, *Globalization and its Discontents* (New York, NY: The New Press, 1998), p. xxi.

<sup>16</sup> See, for example, Myron Weiner, *The Global Migration Crisis: Challenge to States and to Human Rights* (New York, NY: HarperCollins,

1995); and Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989).

<sup>17</sup> Kurt Mills, *Human Rights in the Emerging Global Order: A New Sovereignty?* (London: Macmillan, 1998), p. 97.

<sup>18</sup> Weiner, *The Global Migration Crisis*, p. 7.

<sup>19</sup> Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49 (Spring 1987), p. 251.

<sup>20</sup> Louis B. Sohn and Thomas Buergenthal, eds., *The Movement of Persons Across Borders*, Studies in Transnational Legal Policy, no. 23 (Washington, D.C.: The American Society of International Law, October 1992), p. 1.

<sup>21</sup> Sohn and Buergenthal, eds., *The Movement of Persons Across Borders*, p. 124.

<sup>22</sup> Sassen, *Globalization and its Discontents*, pp. 8-9; Weiner, *The Global Migration Crisis*, pp. 150-55.

<sup>23</sup> Carlos González Gutiérrez, "The Mexican Diaspora in California: Limits and Possibilities for the Mexican Government," in Abraham F. Lowenthal and Katrina Burgess, eds., *The California-Mexico Connection* (Stanford: Stanford University Press, 1993), pp. 221-35.

<sup>24</sup> For a discussion of these groupings see Alan F.J. Artibise, "Cascadian Adventures: Shared Visions, Strategic Alliances, and Ingrained Barriers in a Transborder Region," unpublished paper, April, 1997; and Theodore H. Cohn and Patrick J. Smith, "Subnational Governments as International Actors: Constituent Diplomacy in British Columbia and the Pacific Northwest," *BC Studies*, no. 110 (Summer 1996), pp. 25-59.

<sup>25</sup> Bruce Agnew and Marian Robson, "Moving Beyond the Rhetoric of Cooperation in Cascadia," *Report prepared by The Cascadia Institute, Vancouver, and the Discovery Institute*, Seattle, p. 3; Ross Anderson, "A Seamless Network Urged for Northwest," *The Seattle Times*, 19 December, 1997, pp. B-1 and B-2.

<sup>26</sup> Interview with Blake Delgaty, Director for Customs Border Ser-

vices, Pacific Region, in Vancouver, B.C., 1 May 1998. Delgaty was one of the three individuals most directly involved with implementing the PACE lane. Interviews with Blake Delgaty, kDirector for Customs Border Services, Pacific Region, in Vancouver, BC, 1 May 1998, and 9 August 1999. Delgaty was one of four individuals who in fact made the decision to introduce the PACE lane. See also Paul Schell and John Hamer, "Cascadia: The new Binationalism of Western Canada and the US Pacific Northwest," in Robert L. Earle and John D. Wirth, eds., *Identities in North America: The Search for Community* (Stanford: Stanford University Press, 1995), 140-56.

<sup>27</sup> See "Who Crosses The Border: A View of the San Diego/Tijuana Metropolitan Region," *A Report of San Diego Dialogue*, April 1994.

<sup>28</sup> Interview with Nancy Le Roy, Public Affairs Officer, and Adriana Mendiolea, Cultural Programs Coordinator, U.S. Consulate in Tijuana, Mexico, 29 April, 1998; "San Diego Dialogue", <http://gort.ucsd.edu/sdd/about.html>.

<sup>29</sup> See, for example, Weiner, *The Global Migration Crisis*, pp. 155-64; and Mills, *Human Rights in the Emerging Global Order*, pp. 103-108.

<sup>30</sup> Weiner, *The Global Migration Crisis*, p. 3; Chris Cobb, "Some Canadians See Immigrants as Threat," *Vancouver Sun*, 11 September, 1998, p. A11. Anti-immigrant sentiment also exists in Third World countries. For example, see Juanita Darling, "An Immigration Dispute Far South of the U.S. Border," *Los Angeles Times*, 28 July, 1998, pp. A1, A6 and A7, on Nicaraguans seeking work in Costa Rica.

<sup>31</sup> Lizette Alvarez, "Senate Votes to Increase Number of Foreigners Allowed in U.S. to Fill Technology Jobs," *New York Times*, 19 May, 1998, p. C7; Jacques Steinberg, "Low on Teachers, New York Recruits in Austria," *New York Times*, 11 July, 1998, pp. A1 and B15.

<sup>32</sup> Wayne A. Cornelius, "From Sojourners to Settlers: The Changing Profile of Mexican Immigration to the United States," in Jorge A. Bustamante, Clark W. Reynolds, and Raúl A. Hinojosa Ojeda, eds., *U.S.-Mexico Relations: Labor Market Interdependence* (Stanford, CA: Stanford University Press, 1992), pp. 166-67 and 178-79. Cornelius indicates that a number of the applications under the SAW program were fraudulent, because the applicants in fact had little or no agricultural employment experience.

<sup>33</sup> B. Lindsay Lowell, "Migration Trends and Policies in the United States," in OECD Proceedings, *Migration, Free Trade and Regional Integration in North America* (Paris: Organization for Economic Cooperation and Development, 1998), pp. 63-71; Cornelius, "From Sojourners to Settlers," pp. 155-95; "Immigration: Suspicious Minds," *The Economist*, 4 July, 1998, p. 25. On the ambivalence of the Clinton administration's immigration policies, see Eric Schmitt, "Milestones and Missteps on Immigration: The Clinton Record," *New York Times*, 26 October, 1996, pp. 1 and 9.

<sup>34</sup> "Immigration: Suspicious Minds," p. 25.

<sup>35</sup> There are some notable exceptions to free trade in the NAFTA, such as Canada's high tariffs (formerly import quotas) for supply-managed agricultural products. See Theodore H. Cohn, "NAFTA, GATT, and Canadian-U.S. Agricultural Trade Relations," *The North-South Agenda Papers - no. 10* (Coral Gables, FLA: University of Miami, November 1994), pp. 6-9.

<sup>36</sup> See *NAFTA Text - Including Supplemental Agreements* (Chicago, ILL: CCH Incorporated, 1994), Part V, on "Investment, Services and Related Matters." Capital movements are of course more liberalized in a common market than they are in the NAFTA.

<sup>37</sup> See *NAFTA Text - Including Supplemental Agreements; Cross-Border Movement of Business Persons and the North American Free Trade Agreement* (Canada: Department of Foreign Affairs and International Trade, n.d.); and *Temporary Entry to Canada under the North American Free Trade Agreement: A Guide for American and Mexican Business Persons* (Citizenship and Immigration Canada, 1995).

<sup>38</sup> Jon R. Johnson, *The North American Free Trade Agreement: A Comprehensive Guide* (Aurora, Ontario: Canada Law Book, 1994), pp. 266-67; "North American Agreement on Labor Cooperation," in *NAFTA Text - Including Supplemental Agreements*, pp. 775-801.

<sup>39</sup> "The Administration's Case for NAFTA," Testimony of Ambassador Rufus Xerxa, Deputy United States Trade Representative, "Immigration-Related Issues in the North American Free Trade Agreement," Hearing before the Subcommittee on International Law, Immigration, and Refugees of the House of Representatives Committee on the Judiciary, 103<sup>rd</sup> Congress, 1<sup>st</sup> Session, 3 November 1993, p.



15. See also Francisco Alba, Jean-Pierre Garson, and El Mouhoub Mouhoud, "Migration Policies in a Free Trade Area: The Issue of Convergence with the Economic Integration Process," in OECD Proceedings, *Migration, Free Trade and Regional Integration in North America* (Paris: Organization for Economic Cooperation and Development, 1998), pp. 261-71.

<sup>40</sup> Noemi Gal-Or, "Labor Mobility under NAFTA: Regulatory Policy Spearheading the Social Supplement to the International Trade Regime," *Arizona Journal of International and Comparative Law* 15-2 (1998), p. 366; Matthew J. Slaughter and Phillip Swagel, "Does Globalization Lower Wages and Export Jobs?," *Economic Issues - 11* (Washington, D.C.: International Monetary Fund, September 1997), pp. 3-4. See also Matthew J. Slaughter and Phillip Swagel, "The Effect of Globalization on Wages in the Advanced Economies," *IMF Working Paper WP/97/43* (Washington, D.C.: International Monetary Fund, April, 1997).

<sup>41</sup> Organization for Economic Cooperation and Development, *Employment Outlook: September 1988* (Paris: OECD, 1988), p. 24; and *Employment Outlook: July 1997* (Paris: OECD, 1997), p. 4. The OECD countries with unemployment rates in the double-digit level in 1996 were Belgium, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Poland, and Spain.

<sup>42</sup> For differing views on this issue see George J. Borjas, "Immigrants, Minorities, and Labor Market Competition," *Industrial and Labor Relations Review* 40-3 (April 1987), pp. 382-92; Michael Fix and Jeffrey S. Passel, *Immigration and Immigrants: Setting the Record Straight* (Washington, D.C.: The Urban Institute, May 1994), pp. 47-54.

<sup>43</sup> Fix and Passel, *Immigration and Immigrants*, p. 47.

<sup>44</sup> Jeffrey S. Passel and Michael Fix, "Myths about Immigrants," *Foreign Policy* no. 95 (Summer 1994), pp. 151-60; Keith Griffin, "Nine Good Reasons to Love Labor Migration," *UC Mexus News*, University of California Institute for Mexico and the United States, no. 35, Summer 1998, p. 2; Fix and Passel, *Immigration and Immigrants*, pp. 53-54.

<sup>45</sup> Ahmad Seyf, "Globalisation and the Crisis in the International Economy," *Global Society* 11- 3 (September, 1997), pp. 314-15.

<sup>46</sup> NAFTA Text – Including Supplemental Agreements, p. 313.

<sup>47</sup> A great deal of information exists on the border crossing cards and the new laser visa cards for Mexican nationals. See, for example, "Proyecto Estados Unidos Renovar Casi Cinco Millones de Tarjetas para Cruce Fronterizo," *Cambio*, 2 de Febrero de 1998, p. 9; "State Department Amends Regulations on BCCs, Entry Requirements for Mexican Nationals," *Interpreter Releases: Report and Analysis of Immigration and Nationality Law*, 75-15, 20 April 1998, pp. 542-43; "Abrirán Oficina para Obtener Visas Laser," *Cambio*, 12 de Junio de 1998, p. 5; Sandra Dibble, "Mexicans Issued 'Laser Visas'," *San Diego Union-Tribune*, 21 August, 1998, pp. B1 and B7.

<sup>48</sup> See Gerald A. Wunsch, "Why NAFTA's Immigration Provisions Discriminate Against Mexican Nationals," *Indiana International and Comparative Law Review* 5 (1994), pp. 127-42.

<sup>49</sup> Blank, "The Emerging Architecture of North America," pp. 22-35.

<sup>50</sup> Wunsch, "Why NAFTA's Immigration Provisions Discriminate Against Mexican Nationals," p. 127

<sup>51</sup> See David A. Baldwin, ed., *Neorealism and Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993); and Charles W. Kegley, Jr., *Controversies in International Relations Theory: Realism and the Neoliberal Challenge* (New York: St. Martin's Press, 1995).

<sup>52</sup> See Richard C. Snyder, H.W. Bruck, and Burton Sapin, "Decision-making as an Approach to the Study of International Politics," *Foreign Policy Analysis Project Series no. 3*, Princeton, NJ, 1954; Richard C. Snyder, H.W. Bruck, and Burton Sapin, *Foreign Policy Decision-Making* (New York: Free Press, 1962); Graham Allison, *The Essence of Decision* (Boston: Little, Brown and Company, 1971); and Morton Halperin, *Bureaucratic Politics and Foreign Policy* (Washington, D.C.: Brookings, 1974).

<sup>53</sup> See, for example, Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42-3 (Summer 1988), pp. 427-60; Peter B. Evans, Harold K. Jacobson, and Robert D. Putnam, eds., *Double-Edged Diplomacy: International Bargaining and Domestic Politics* (Berkeley: University of California

Press, 1993); Robert O. Keohane and Helen V. Milner, eds., *Internationalization and Domestic Politics* (Cambridge: Cambridge University Press, 1996); and Milner, *Interests, Institutions, and Information*.

<sup>54</sup> This section draws extensively upon Milner, *Interests, Institutions, and Information*, pp. 9-26.

<sup>55</sup> Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly* 32-4 (December 1988), p. 383.

<sup>56</sup> Milner, *Interests, Institutions, and Information*, p. 20.

<sup>57</sup> Peter B. Evans, "Building an Integrative Approach to International and Domestic Politics: Reflections and Projections," in Evans, Jacobson, and Putnam, eds., *Double-Edged Diplomacy*, pp. 411-12.

<sup>58</sup> Sassen, *Globalization and its Discontents*, p. 33; Weiner, *The Global Migration Crisis*, p. 7.

<sup>59</sup> Schmitt, "Milestones and Missteps on Immigration," p. 9.

<sup>60</sup> For a detailed discussion of these domestic factors, see Milner, *Interests, Institutions, and Information*.

<sup>61</sup> See James Gerber, "Cycles and Trends in San Diego and California," in Norris C. Clement and Eduardo Zepeda Miramontes, eds., *San Diego-Tijuana in Transition: A Regional Analysis* (San Diego: Institute for Regional Studies of the Californias, San Diego State University, 1993), pp. 5-16.

<sup>62</sup> Stephen S. Cohen and Clara Eugenia Garcia, "California's Missile Gap," *California Management Review* 37-1 (Fall 1994), pp. 110-31. See also Sandra Hoffmann, Sherman Robinson, and Shankar Subramanian, "The Role of Defense Cuts in the California Recession: Computable General Equilibrium Models and Interstate Factor Mobility," *Journal of Regional Science* 36-4 (November 1996), pp. 571-95; Donna Cassata, "Californians Pressure Clinton to Reject Panel's List," *Congressional Quarterly* 53-26 (1 July, 1995), pp. 1939-41; "The McClellan Factor," *The Economist*, 15 July, 1995, pp. 17-18.

<sup>63</sup> On the California policy tactics and preferences see Randy Willoughby, "Immigration, Race, and Security on the California-Mexico Border," in Paul Ganster, Alan Sweedler, James Scott, and

Wolf Dieter-Eberwein, eds., *Borders and Border Regions in Europe and North America* (San Diego, CA: San Diego University Press, 1997), pp. 267-92.

<sup>64</sup> Andrew Murr, "A Nasty Turn on Immigrants," *Newsweek*, 23 August, 1993, p. 28. On the legacy of Governor Pete Wilson in California see also Steve Forbes, "Low Road," *Forbes*, 13 September, 1993, p. 26; Sidney Blumenthal, "The Pete Principle," *The New Yorker*, 30 October, 1995, pp. 46-50; Todd S. Purdum, "Victory Shines Light on Shift in Population," *New York Times*, 5 November, 1998, p. B2; and Bill Bradley, "Gray's Days in California," *The Nation*, 28 December, 1998, pp. 15-19.

<sup>65</sup> "Making Up With Mexico," *Los Angeles Times*, 1 February, 1999, p. B4. Although the current California Governor Gray Davis has opposed Proposition 187, controversy over the Proposition continues, and Davis has sought to resolve the conflict by mediation. See, for example, Dave Leshner, "Davis Won't Follow Prop. 187 on Schools," *Los Angeles Times*, 21 May, 1999, pp. A1 and A31.

<sup>66</sup> The impact of immigration (both legal and illegal) on government costs versus revenues is in fact complex and often difficult to determine. For example, one study finds that "contrary to the public's perception, when all levels of government are considered together, immigrants generate significantly more in taxes paid than they cost in services received. This surplus is unevenly distributed among different levels of government, however, with immigrants (and natives) generating a net surplus to the federal government, but a net cost to some states and most localities." (Fix and Passel, *Immigration and Immigrants*, pp. 57-58.

<sup>67</sup> Nativism takes various forms, and has been defined as a "policy of favoring the native inhabitants of a country as against immigrants", and also as the "emphasis upon heredity or native constitution as explaining the origin and development of intelligence." (*Webster's New International Dictionary of the English Language*, 2<sup>nd</sup> edition unabridged, 1961, p. 1630.)

<sup>68</sup> Tucker Carlson, "The Intellectual Roots of Nativism," *The Wall Street Journal*, 2 October, 1997.

<sup>69</sup> <http://www.fairus.org>, "What Is The Federation for American Immigration Reform?", p. 1.

<sup>70</sup> *The Economist, Pocket World in Figures – 1999* (New York: John Wiley & Sons, 1998), p. 214

<sup>71</sup> Quoted in Carlson, "The Intellectual Roots of Nativism." Ironically, Garrett Hardin's ideas concerning the "Tragedy of the Commons" are widely cited by those warning against environmental degradation today.

<sup>72</sup> Quoted in Carlson, "The Intellectual Roots of Nativism."

<sup>73</sup> Carl Pope, "Moving On: Lessons on the Immigration Debate," *Sierra* 83-4 (July / August, 1998), p. 14; <http://www.fairus.org>, "Immigration Hastens Environmental Damage," p. 1. See also Jane Kay, "Sierra Club: Sidestep on Immigration," *San Francisco Examiner*, 26 April, 1998.

<sup>74</sup> <http://www.fairus.org>, "Immigration Lowers Wages for American Workers," p. 1.

<sup>75</sup> <http://www.fairus.org>, "What Is The Federation for American Immigration Reform?", p. 1.

<sup>76</sup> For a detailed discussion of the Clinton administration's immigration policies, see Schmitt, "Milestones and Missteps on Immigration," pp. 1 and 9.

<sup>77</sup> "Angst v. Optimism," *The Economist*, 11 May, 1996, p. 30.

<sup>78</sup> Weiner, *The Global Migration Crisis*, p. 87.

<sup>79</sup> "Angst v. Optimism," p. 30.

<sup>80</sup> John Heilemann, "Do You Know the Way to Ban José?," *The Netizen* magazine website (August, 1996), p. 178.

<sup>81</sup> For a detailed discussion of the dispute over "splitting the bill" with regard to legal and illegal immigration, see Heilemann, "Do You Know the Way to Ban José?"

<sup>82</sup> U.S. Senate, "The Border Improvement and Immigration Act of 1998," *Report* presented by Senator Orrin G. Hatch, June 1, 1998, p. 6.

<sup>83</sup> See "The Visa Waiver Pilot Program," in *1997-98 Immigration & Nationality Law Handbook, Vol. I* (Washington, D.C.: American Immigration Lawyers Association, 1997), pp. 221-30. Nationals from 25 countries were eligible for the VWPP in 1997-98: Andorra, Argentina, Australia, Austria, Belgium, Britain, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, San Marino, Spain, Sweden, and Switzerland.

<sup>84</sup> "Eleventh-Hour Agreement Folds Immigration Bill into Omnibus Spending Measure," *Interpreter Releases: Report and Analysis of Immigration and Nationality Law*, 73-7, 30 September, 1996, pp. 1281-82.

<sup>85</sup> U.S. Senate, "The Border Improvement and Immigration Act of 1998," *Report* presented by Senator Orrin G. Hatch, June 1, 1998, pp. 6-7.

<sup>86</sup> Two years later, in October 1998, a number of immigration-related provisions were again combined with an omnibus spending bill (the fiscal year 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act) so that they could pass in the final days of the 105<sup>th</sup> Congress. Unlike the case of the 1996 legislation, immigration advocates scored some key victories in the 1998 legislation; but in both cases many Congressmen were unaware of the some of the implications of the immigration legislation. Thus, Representative Peter A. DeFazio (D- Oregon) stated about the 1998 omnibus bill, "Heck, half the members couldn't even lift it, let alone read it." (Quoted in "Omnibus Measure, Stand-Alone Bills, Provide Substantial Gains to Immigrants," *Interpreter Releases: Report and Analysis of Immigration and Nationality Law*, vol. 75, no. 42, p. 1505.)

<sup>87</sup> Schmitt, "Milestones and Missteps on Immigration," p. 9.

<sup>88</sup> See Gerald Wright and Maureen Appel Molot, "Capital Movements and Government Control," Annette Baker Fox, Alfred O. Hero, Jr., and Joseph S. Nye, Jr., eds., *Canada and the United States: Transnational and Transgovernmental Relations* (New York: Columbia University Press, 1976), pp. 79-96.

<sup>89</sup> Maureen Appel Molot, "Canada-U.S. Relations: The Politics of Attraction and Distance," *Jerusalem Journal of International Relations* 6-2 (1982), p. 94; Edelgard E. Mahant and Graeme S. Mount, *An Introduction to Canadian-American Relations*, 2nd edition (Scarborough, ONT: Nelson Canada, 1989).

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<sup>93</sup> Letter from Raymond Chrétien to the Honourable Spencer Abraham, Chairman, Senate Immigration Subcommittee, September 30, 1997; Canadian Embassy, "Canada's Position on the 'Illegal Immigration Reform and Immigrant Responsibility Act of 1996,'" 17 September, 1997.

<sup>94</sup> Letter from Raymond Chrétien, Canadian Embassy, to the Honourable Lamar S. Smith, Chairman, House Immigration & Claims Subcommittee, 16 December, 1996.

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<sup>96</sup> "Accord On Our Shared Border – Second Anniversary Report," <http://www.cdnemb-washdc.org/news/pubs/accord.txt>.

<sup>97</sup> Canadian Embassy, Washington, D.C., "Canada's Concerns About Section 110 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act of 1996," <http://www.cdnemb-washdc.org/section110/>.

<sup>98</sup> Statement by Jerry Craig, Canadian Consul, cited in "Se Solidariza Gobierno Canadiense con Comerciantes Fronterizos," *Cambio*, 27 de Abril de 1998, pag. 7.

<sup>99</sup> Canada, House of Commons, "U.S. Illegal Immigration Reform and Immigration Responsibility Act, Section 110," Presentation by Michael Leir, 25 November, 1997, p. 13.

<sup>100</sup> Canadian Embassy, Washington, D.C., "The World's Largest Trading Relationship," [http://www.cdnemb-washdc.org/section\\_110/wltr.html](http://www.cdnemb-washdc.org/section_110/wltr.html), and "Sectoral Information: Section 110 Spells Trouble for Tourism, Trucking and Trade," <http://www.cdnemb-washdc.org/section110/sect.html>

<sup>101</sup> "Coalition Building to Oppose Section 110," unpublished paper; Americans for Better Borders, "Coalition Members," <http://www.uschamber.org/policy/abb/members.htm>.

<sup>102</sup> Remarks by Senator Spenser Abraham at the Introduction of Bill S. 745, *Congressional Record – Senate*, 25 March, 1999, p. S3477; Statement of Dr. Demetrios G. Papademetriou and Deborah Waller Meyers, International Migration Policy Program, Carnegie Endowment for International Peace, before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, U.S. House of Representatives, 14 April, 1999, pp. 4-5.

<sup>103</sup> Bellingham/Whatcom County Chamber of Commerce and Industry, "Chamber Mobilizes to Keep Northern Border Open," *Press Release*, December, 1996.

<sup>104</sup> On the contrast between the Canadian and American views of North America see Theodore Cohn, "Canadian and Mexican Trade Policies towards the United States: A Perspective from Canada," in John Curtis and David Haglund, eds., *Canada and International Trade*, vol. I (Montreal, QUE: Institute for Research on Public Policy, 1985), pp. 7-61.

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<sup>107</sup> John Harris, "Anti-Alien Law Threatens to Slow Border Traffic," *The Bellingham Herald*, September 25, 1997, pp. A1 and A2; "Amend Border Law Immediately," *The Bellingham Herald*, 1 October, 1997.

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<sup>110</sup> Quoted in Heilemann, "Do You Know The Way to Ban José?," p. 177.

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<sup>112</sup> Letter from Alan K. Simpson and Lamar S. Smith to His Excellency Raymond Chrétien, Ambassador of Canada, Washington, D.C., 18 December, 1996.

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<sup>114</sup> Representative Mel Watt (D-North Carolina), to House of Representatives debate on Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Amendment, 9 November, 1997, p. H10570.

<sup>115</sup> Representative Silvestre Reyes (D-Texas), in *ibid.*, p. H10572.

<sup>116</sup> Representative Mel Watt (D-North Carolina), in *ibid.*, p. H10569.

<sup>117</sup> Representative Mel Watt (D-North Carolina), in *ibid.*, p. H10569.

<sup>118</sup> Statement by Representative Bob Filner (D-California), quoted in Angel Guerrero, "Sección 110, una Ampliación de la Ignorancia: Bob Filner," *El Mexicano*, 20 de Abril de 1998, page. 1-6A. Filner was the only House member from the San Diego region who had voted against various aspects of the 1996 illegal immigration bill, including Section 110 (the other four Representatives from the San Diego region were Republicans).

<sup>119</sup> Letter from George W. Bush, Governor of Texas to the Honorable Janet Reno, U.S. Attorney General, 30 January, 1998; Letter from Jane Dee Hull, Governor of Arizona to the Honorable Spencer Abraham, Chairman, Immigration Subcommittee, U.S. Senate, 13 February, 1998.

<sup>120</sup> <http://www.uschamber.org/policy/abb/members.htm>, "Americans for Better Borders," Coalition Members."

<sup>121</sup> Mailman and Yale-Loehr, "The Price of Tracking Overstays," p. 3; "Border Nightmare: Two-Way Inspections Would be a Disaster," *San Diego Union-Tribune*, 5 April, 1998, p. G-2; "An Impractical Proposal," *San Diego Union-Tribune*, 7 April, 1998, p. B-6.

<sup>122</sup> Jorge A. Bustamante, "Frontera Norte: Ley de Inmigración en EU," *El Excelsior*, 28 de Marzo de 1997, pag. 7-A.

<sup>123</sup> Quoted in Mailman and Yale-Loehr, "The Price of Tracking Overstays," p. 5.

<sup>124</sup> See Theodore H. Cohn, "The Intersection of Domestic and Foreign Policy in the NAFTA Agricultural Negotiations," *Canadian-American Public Policy*, no. 14 (Orono, University of Maine, September 1993), pp. 24-33.

<sup>125</sup> Philip. L. Martin and Mark J. Miller, "European-American Immigration Convergence," *International Migration Review* 28-3 (Fall 1994), p. 592.

<sup>126</sup> Willoughby, "Immigration, Race, and Security on the California-Mexico Border," p. 268.

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<sup>129</sup> Sergio Anzures Ochoa, "Trabas Para Cruzar la Línea: Reforma en EU a la Ley de Inmigración de 1996," *El Mexicano* (Tijuana, B.C.), 14 de Abril de 1998, pags. 1-2; José Luiz Martinez Cazares, "Comerciantes se Unen Contra la Ley de Inmigración," *La Voz*, 17 de Abril de 1998, pag. 13-B; "Se Solidariza Gobierno Canadiense con Comerciantes Fronterizos," *Cambio*, 27 de Abril de 1998, pag. 7; "Podrían Modificar Controvertida Ley Migratoria que Pretend EU," *El Mexicano*, 8 de Julio d 1998, pag. 2.

<sup>130</sup> The San Diego Union-Tribune, April 22, 1977, p. A-3.

<sup>131</sup> In the House of Representatives, Representative LaFalce (D-New York) introduced Bill H.R. 2481 on 16 September, 1997. In the Senate, Senator Murray (D-Washington) introduced Bill S. 1205 on 13 September, 1997; and Senator Dorgan (D-North Dakota) introduced Bill S. 1212 on 24 September, 1997.

<sup>132</sup> Senator Abraham's Bill S. 1360, and the Senate testimony regarding it, are contained in *Congressional Record – Senate*, 4 November, 1997, pp. S11678-S11682.

<sup>133</sup> The four dissenters were Ashcroft (R-Missouri), Feinstein (D-California), Sessions (R-Alabama), and Torricelli (D-New Jersey).

<sup>134</sup> See U.S. Senate, "The Border Improvement and Immigration Act of 1998," *Report* presented by Senator Orrin G. Hatch, June 1, 1998; "Automated Control of Nation's Borders Could Be Derailed," *Wall Street Journal*, June 19, 1998, p. 3; Robert Russo, "U.S. Senate Kills Plan for Border Crackdown," *Toronto Globe and Mail*, July 24, 1998, pp. A1 and A6.

<sup>135</sup> H.R. 2920 was introduced by Representative Gerald Solomon (R-New York), and passed by the House on 10 November, 1997.

<sup>136</sup> Remarks by Senator John McCain (R-Arizona) at the Introduction of Bill S. 745, *Congressional Record – Senate*, 106th Congress, 1st Session, 25 March 1999, p. S3480.

<sup>137</sup> Sassen, *Globalization and its Discontents*, p. xxi.

<sup>138</sup> Milner, *Interests, Institutions, and Information*.

<sup>139</sup> For a comparison of Canadian and Mexican difficulties with the U.S. Congress see Cohn, "Canadian and Mexican Trade Policies towards the United States," pp. 32-38.

<sup>140</sup> See Peter C. Dobell, "The Influence of the United States Congress on Canadian-American Relations," in Annette Baker Fox, Alfred O. Hero, Jr., and Joseph S. Nye, Jr., eds., *Canada and the United States: Transnational and Transgovernmental Relations* (New York, NY: Columbia University Press, 1976), pp. 310-36.

<sup>141</sup> Bustamante, "Frontera Norte: Ley de Inmigración en EU," pag. 7-A. See also Donald L. Wyman, "The United States Congress and the Making of U.S. Policy Toward Mexico," *Working Papers in Mexican Studies No. 13* (La Jolla, CA: University of California San Diego, 1981).

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<sup>144</sup> John Holmes, *Life with Uncle: The Canadian-American Relationship* (Toronto, ONT: University of Toronto Press, 1981), p. 79.

<sup>145</sup> Martinez, "NAFTA's Effect on Human Rights at the Border," p. 985.

<sup>146</sup> Roger Gibbins, "Meaning and Significance of the Canadian-American Border," in Paul Ganster, Alan Sweedler, James Scott, and Wolf Dieter-Eberwein, eds., *Borders and Border Regions in Europe and North America* (San Diego, CA: San Diego University Press, 1997), pp. 316-17.

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<sup>148</sup>148 Canadian Embassy, Washington, D.C., "Drug Trafficking and the United States-Canada Border," <http://www.cdnemb-washdc.org/section110/drugs.html>.

<sup>149</sup> J.C.M. Ogelsby, *Gringos From the Far North: Essays in the History of Canadian-Latin American Relations 1866-1968* (Toronto: Macmillan Company of Canada, 1976), p. 1.

<sup>150</sup> "Who Crosses The Border," *A Report of San Diego Dialogue*, pp. 20-25.

<sup>151</sup> Canadian Embassy, Washington, D.C., "Sectoral Information," p. 1.

<sup>152</sup> See S. 745, "To Amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to Modify the Requirements for Implementation of an Entry-exit Control System," in the Senate of the United States, March 25, 1999; H.R. 1650, "To Amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to Modify the Requirements for Implementation of an Entry-exit Control System," in the House of Representatives, April 29, 1999.

<sup>153</sup> Kathleen Kenna, "Canada Joins U.S. Senators in Bid to Curb Border Delays," *Toronto Star*, 19 May, 1999, p. A 15; Joel Connelly and Michael Paulson, "U.S., Canada Say Border Law Would Create Havoc," *Seattle Post-Intelligencer*, 19 May, 1999, p. A3.

<sup>154</sup> Confidential interview, 21 May, 1999.

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<sup>156</sup> Confidential interview, 8 January, 1999. Although Hastert's State of Illinois has a large amount of trade with Canada, he has to this point been an effective House Speaker, and he may leave decisions over the immigration issue to subcommittee chairs such as Lamar Smith. See Alison Mitchell and Tim Weiner, "Renewed Divisions Leave House G.O.P. in a Serious Stall," *New York Times*, 29 May, 1999, pp. A1 and A10.

<sup>157</sup> "Open Admissions," *National Review*, 49-2, 10 February, 1997, pp. 18-19.

<sup>158</sup> R.W. Apple, Jr., "Partisanship Lives On," *New York Times*, 29 January, 1999, pp. A1 and A13; "How They Voted," *New York Times*, 13 February, 1999, p. A12.

<sup>159</sup> Americans for Better Borders, "Section 110 At A Glance," p. 1. See also Testimony of Michael J. Hrinyak, Deputy Assistant Commissioner for Inspections, Immigration and Naturalization Service before U.S. Senate Immigration Subcommittee regarding "Implementation of the Automated Entry-Exit Control System, 5 November, 1997; and "Section 110 of the 1996 Illegal Immigration Reform Act: Possible Impact on the U.S.-Canada Bilateral Relationship," Testimony by Eric Knusman, Director, Office of Canadian Affairs, U.S. State Department before the U.S. Senate Immigration Subcommittee, 5 November, 1997.

<sup>160</sup> Robert A. Pastor, *Congress and the Politics of U.S. Foreign Economic Policy, 1929-1976* (Berkeley: University of California Press, 1980), p. 78. See also Theodore H. Cohn, *Global Political Economy: Theory and Practice* (New York: Addison-Wesley Longman, 2000), ch. 8.

<sup>161</sup> I.M. Destler, *American Trade Politics* (Washington, D.C.: Institute for International Economics and the Twentieth Century Fund, 2<sup>nd</sup> edition, June 1992), pp. 14-15; Gilbert R. Winham, *The Evolution of International Trade Agreements* (Toronto: University of Toronto Press, 1992), p. 19.

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