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COMMENTARIES

NAFTA AND THE GATT: A REGIONAL PERSPECTIVE ON THE URUGUAY ROUND

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As neither a lawyer nor a student of the General Agreement on Tariffs and Trade (GATT), I do not propose to undertake the traditional role of a commentator. However, I would like to comment on a few of the points that were made by Professor Jackson and Professor Abbott in their very cogent papers. The first is the institutional reform — or perhaps “completion” — of the GATT, a principle which Canada strongly supports. Indeed, it may be recalled that in 1990 Canada’s then Minister of International Trade, John Crosbie, proposed the establishment of a World Trading Organization in terms not unlike those proposed by Professor Jackson. The Multinational Trade Negotiation (MTN) discussions have made progress in this area and Canada thinks that there are reasonable prospects for agreement at Geneva, at least on a workplan leading toward the creation of such a body.

I can also express the strong hope — and the word “strong” is perhaps not strong enough — of the Canadian Government to see a satisfactory resolution of the impasse on agriculture which has crippled the current GATT negotiations begun at Punta del Este, Uruguay in September 1986 (Uruguay Round). Through the Cairns Group, as well as in the Uruguay Round negotiations, Canada has worked very hard to achieve an agreement on the reduction, if not elimination, of agricultural subsidies and overproduction. Canada has made this effort for the simple reason that our agricultural sector continues to suffer enormously from the international agricultural “subsidies war” between the

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United States and the European Economic Community. Moreover, support payments to Canadian producers have undermined our government's efforts to reduce the federal budget deficit and have distorted federal expenditure patterns. The November 1991 reports of an emerging compromise on the reduction of agricultural subsidies are therefore extremely encouraging and one hopes they prove to be true.

I would also like to refer to one of the long list of issues which the GATT will have to confront after the Uruguay Round — the linkage between trade policy and environmental protection is part of the whole nexus of environmental challenges that Canada and other countries are currently confronted with. Indeed such linkage is starting to appear as an issue in our bilateral trading relationship with the United States. One small example is the recycling regulations for newsprint that are being enacted by the various states. This example also demonstrates that, whereas the GATT may bind national governments, it is not always properly taken into account at other levels of government. This question of application occurs at more than just the province or state level. For example, Suffolk County in Long Island, New York has mandated the recycling content of the newsprint for papers to be sold within the county.

NAFTA AND THE WORLD TRADING SYSTEM

My contribution to this symposium is to look briefly at the North American Free Trade Agreement (NAFTA) negotiations, and to try and place them in the context of the MTN and the evolving GATT system.

Both the NAFTA negotiations and Canada's participation in them are closely connected to the Canada-United States Free Trade Agreement (FTA). That agreement in turn reflects the very special nature of the Canada-United States economic relationship. Over one quarter of the Canadian gross national product is generated through trade, and seventy-five percent of Canadian trade is with the United States (over 200 billion dollars in goods and services last year). Moreover, over two-thirds of Canadian exports to the United States are in just five commodity groups: forestry, energy, metals and minerals, agriculture and food products, and automobiles. Only the last group involves a high percentage of value added products. A small number of companies, only fifty, account for two-thirds of Canadian exports. It was the recognition of the inherent vulnerability in this

situation that led the Canadian Government to initiate free trade discussions with the United States as a means of securing and improving Canadian access to the vital United States market.

The FTA negotiations, more or less, coincided with the beginning of the Uruguay Round. Canada has taken a very active part in the Uruguay Round and the decision to try for a FTA did *not* represent any decline in our strong commitment to an open multilateral trading system. Rather, it marked our recognition that Canadian interests vis-à-vis the United States required a bilateral arrangement consistent with, but complementary or additional to, the provisions of the GATT.

The period since the launch of the Uruguay Round also coincided with the introduction of several basic changes in the economic and trade policies of Mexico, including: its adhesion to the GATT in 1986, its progressive reduction of tariff schedules from 1985 onwards, its abolition of most import license requirements, the sale of some two-thirds of Mexican state companies, the elimination of most quantitative restrictions on imports, the great reduction in restrictions on foreign investment, etc.

When it became clear last year that Mexico would seek to underpin these domestic reform measures with a new trading relationship with the United States (which is as important a market for Mexico as it is for us), Canada was obliged to decide whether or not to take part in these negotiations, and, if so, in what manner. Our decision to participate as a full partner reflected a number of economic and practical considerations and objectives.

First, although the current level of Canadian trade with Mexico is relatively modest, 2.2 billion dollars in 1990, compared to well over 50 billion dollars between Mexico and the United States, that figure has increased twenty-five percent since 1988. A NAFTA would secure Canadian access to a Mexican market of 85 million people and create a single North American trading framework consisting of 360 million people with six trillion dollars in economic output.

Second, a NAFTA would institute a rule-based regime for trade and investment among the three countries, offering certainty and predictability to traders and investors in all three.

Third, it would create a level playing field for investment decisions. Separate Mexico-United States and Canada-United States trade agreements would create a hub-and-spoke arrange-

ment, that would clearly benefit the investment and production activities in the United States far more than in either Mexico or Canada.

Fourth, by participating in the NAFTA negotiations Canada has an opportunity to influence them, so as to preserve, promote and possibly expand the gains made through the Canada-United States Free Trade Agreement. Government procurement and financial services are two of the areas where we hope the NAFTA will exceed the provisions of the FTA. The United States, of course, has its own ideas on improvements. Canada and the United States have agreed that the NAFTA may carry us forward but should not take us backward by eroding the rights and obligations we agreed to under the FTA.

Fifth, we believe it is in Canada's interest to support the continuation of the economic and political reforms that the Mexican Government is undertaking. Mexican adherence to the NAFTA should serve to bind it, in some respects, to a market economic system. The economic growth in Mexico, which can be expected from the NAFTA, would mitigate the economic and social difficulties that have contributed to drug and emigration problems, and should help Mexico improve its labor standards and the enforcement of its environmental regulations. The transparency and due process involved in maintaining and enforcing international trade standards in connection with the NAFTA should also contribute to the reform of Mexico's administrative and judicial system.

As you know, we are in the midst of the NAFTA negotiating process. The three responsible Ministers, Mrs. Hills, Señor Serra, and Mr. Wilson, have now met on three occasions, and their chief negotiators have also met separately three times. NAFTA working groups have had some five meetings each. Importantly, the Ministers have agreed that in some areas draft texts could be prepared and exchanged.

The NAFTA negotiations involve many areas of concern between the three countries. Specifically, these areas include:

— The exchange of initial tariff "offers" which took place in September. All three governments agree that, at the end of an appropriate transition period, all tariffs on all goods originating in the free trade area will be eliminated.

— On rules of origin, the Canadian and United States experiences under the FTA suggests that excessive reliance on a "value-added" test to determine the country of origin may not

provide the certainty and predictability that businessmen need, nor the objectivity in administration that governments deserve. The three countries are, therefore, exploring whether a simpler "origin" test, such as a change of tariff classification heading under the Harmonized System, might be used.

— We are also concerned that other border measures may become impediments to trade. Quantitative restrictions, import licensing, and a range of Mexican nontariff barriers should be subject to appropriate disciplines, as are found in the FTA.

— Canada seeks expanded opportunities in both the United States and Mexican Government procurement markets. Mexico is not a member of the GATT Government Procurement Code, and we thus are seeking, through the NAFTA, to provide Canadian businesses with access to the Mexican Government procurement market under a reformed, code-based regime. As between the United States and Canada, the FTA currently covers only specified entities with respect to certain specified purchases. Neither sub-national nor federally-funded procurement is addressed, and government purchases administered under small business or minority purchasing programs are excluded. The NAFTA negotiations are providing an opportunity to pry open a larger part of government purchasing in the United States to international, market-based competition.

— The negotiation of technical standards is a particularly challenging area. On the one hand, such standards can be used for protectionist ends. On the other hand, each country must maintain the right to set health, sanitary, safety, and environmental objectives. The negotiators are seeking to strike the right balance between these two concerns. A similar discussion is nearing conclusion in the Uruguay Round which would revise the GATT Technical Barriers to Trade Code.

— The FTA shows that services and investment can, and should, be the subject of trade disciplines, such as national treatment and non-discrimination. The MTN negotiations have clarified that the "right of establishment" or "right of commercial presence" is really but one aspect of ensuring effective opportunities to goods producers and service providers to compete across borders. Accordingly, in the NAFTA, negotiators are looking closely at the relationships involved in the investment and service disciplines.

— The three parties are placing a high priority on ratifying and implementing the Uruguay Round results on Trade Related

Intellectual Property (TRIPS).

— The trade remedy universe — “contingency protection” — was the most contentious issue in the FTA negotiations. In the NAFTA, Canada and the United States are concerned with ensuring that emergency relief, in the form of temporary safeguard measures, is available to those private companies who face unexpected import competition during the transition period. As it relates to antidumping and countervailing duties, Chapter 19 of the FTA will continue to apply as between Canada and the United States; it remains to be determined whether and how it might be applied or extended to Mexico.

Institutional and Dispute Settlement arrangements should flow from the substantive provisions of the agreement. To ensure the agreement fulfills the objectives set by the three governments, these arguments must provide timely, effective and efficient means for the avoidance and amicable resolution of differences.

The foregoing reflects the fact that we are still in the midst of negotiations and have not reached the resolution stage.

An important question that will need to be resolved is the relationship between the NAFTA, the FTA, the GATT, and the other trade agreements, such as between Mexico and Chile. The FTA has been described as a “GATT-Plus” agreement; it reaffirms the two countries’ GATT obligations, which continue to apply unless otherwise provided in the FTA. The NAFTA should follow the same principle. It should be a “GATT-Plus, FTA-Plus” Agreement. Neither Canada nor the United States is seeking to renegotiate the FTA. Any changes to the FTA will be made only if both countries consider them to be genuine improvements. If such improvements are not agreed to, then the existing provisions of the FTA will continue to apply between Canada and the United States.

Regarding the relationship of the NAFTA to the GATT system, there are two points to be made. First, a successful NAFTA will create a precedent for the negotiation of new, complex contractual trade arrangements involving developed and developing countries.

As you know, Mexico stood aloof from much of the post war trade negotiation framework. It waited almost thirty years from the GATT’s inception to become a member, and the Uruguay Round marks only its second active participation in GATT negotiations. Moreover, as was pointed out earlier, the obligations

for developing countries under the GATT rules are considerably less demanding, overall, than those for industrialized parties. NAFTA can be expected to create much stricter contractual obligations for Mexico than it has heretofore faced. Indeed, since the NAFTA negotiating agenda largely tracks the contents of the Canada-United States Free Trade Agreement, the NAFTA negotiations may be considered, in some respects, to mark Mexico's international legal graduation to the club of more-developed or industrialized trading nations.

Thus, the NAFTA will illuminate and help define issues and standards for future agreements involving developing countries in Latin America, Asia, and elsewhere. It can also be expected that, over time, such agreements will have implications for the developing countries' positions at the GATT in Geneva concerning some, or all, of the differential provisions from which they now benefit. For example, once the NAFTA is in place it will become more difficult for Mexico to sustain one position under the GATT while having accepted a more stringent obligation under the NAFTA.

Second, the NAFTA must be looked at as one element of an emerging new trade relations system, built on the same principles as the original GATT but more attuned to the problems of today. Transparency, due process, nondiscrimination, and open markets remain as valid as they were forty years ago, but they translate into different commitments today that reflect the greater degree of international economic integration and interdependence.

Today's challenges are not the same as those of forty or fifty years ago — curbing protectionism at the border — but involve addressing the trade distorting dimensions of domestic policy: the need to broaden the application of national treatment to new areas, such as investment, agricultural support programs, competition policy and intellectual property protection. These additional issues are more complex to negotiate and require a more flexible and nuanced approach. This approach is the much broader front along which negotiations are now proceeding under the Uruguay Round. A successful NAFTA, far from supplanting or weakening the GATT system, should help strengthen and affirm it. In the process it will help foster a new era of international economic growth, just as the GATT did in the 1940s.

