

THE CURRENT STATE OF PREPARATIONS FOR A FREE TRADE AGREEMENT

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The author explains the current situation regarding the launching of free trade negotiations between Canada, Mexico and the United States and discusses the application of the "fast track" procedure.

He then presents an overview of what should be included in the Free Trade Agreement and underlines the need to eliminate obstacles in order to allow the flow of goods, services and investment.

He suggests the inclusion in the negotiations of issues such as labour norms, employment insurance, drug trafficking, environmental norms, human rights and political reform.

L'auteur se situe à l'heure des négociations d'un accord de libre échange entre le Canada, le Mexique et les États-Unis et il explique la procédure du *fast track*.

Par la suite, il présente un panorama de ce que devrait contenir un accord de libre échange et il souligne la nécessité d'éliminer les obstacles à la libre circulation des marchandises, des services et des capitaux.

L'auteur recommande que des questions telles que les normes de travail, la sécurité d'emploi, le trafic de stupéfiants, les normes de protection de l'environnement, les droits de la personne et les réformes politiques, fassent partie de l'Accord.

He concludes by outlining the areas where the Agreement is likely to find support or opposition.

Il termine en indiquant les sujets sur lesquels il y aura probablement entente et ceux sur lesquels il y aura sans doute désaccord.

As you well know, Presidents Salinas and Bush and Prime Minister Mulroney of Canada, simultaneously announced that our three nations will seek to negotiate a Trilateral Free Trade Agreement. The goal is to achieve this within the program foreseen previously for the bilateral negotiations between the United States and Mexico. In other words, the goal is to complete the negotiations of an agreement by year's end. Once the package has been negotiated, it will be sent to our respective legislatures under the procedures established in each nation, with the hope of obtaining the necessary legislative approval in time for said agreement to enter into force by the end of 1992.

I will now endeavor to:

- 1) Explain where things are regarding the launching of the current negotiations.
- 2) Present a brief overview of what an FTA can include.
- 3) Briefly refer to the point regarding where it is likely to find support and opposition.

Once Canada's participation has been confirmed, initiation of formal negotiations is related with confirmation of "fast track" proceedings in regard to American legislative procedures: The term "fast track" can give way to some misunderstandings. The

procedures has nothing to do with accelerating or expediting negotiations. Rather, it refers to American congressional procedures to consider the agreement after negotiations. Under these procedures each Chamber of the Congress votes, yes or no, regarding the agreement as a whole. No amendments are allowed.

The idea of adopting these procedures known as "fast track" surfaced in the aftermath of the Kennedy Round of multilateral trade negotiations of the GATT in the 1960's. Amendments to this Agreement during Congressional considerations nullified some important concessions that were made by American trade negotiators as part of the general package. Obviously this weakens the credibility of negotiations. A subsequent Trade Law has established rules for the so-called "fast track". Many in Congress are uneasy with this limitation in their ability to amend the related legislation, but those closer to trade negotiations have been able to persuade their legislative comrades that it is extremely difficult to negotiate any type of meaningful trade package without this sort of procedure. Authority for "fast track" rules in current American trade legislation forces the President to notify the Senate Ways and Means Committee and the Finance Committee of their intention to negotiate an agreement. "Fast track" procedures will be applied unless one of the commissions votes to disapprove them within 60 legislative days. The 60 legislative days will run in the days following President Bush's September notification regarding the FTA with Mexico.

There is yet another aspect to this matter. The

same Fast Track provisions expire in June of the present year. However, they will automatically be extended for two years: if and when: 1) President Bush requests it before March 1st; and 2) none of the Congressional Chambers passes a disapproval resolution within the 90 calendar days that follow. The President will request an extension. The reason that this has not been done yet, is that it is uncertain whether the President will propose the use of authority only for specific purposes, e.g., an Mexico-USA-Canada FTA, and not for broader purposes, e.g., the Uruguay GATT Round. This decision will depend on where things stand with the Uruguay Round and it is likely that it will be made before the 1st of March.

The effect of all this is that those who oppose an FTA in the United States can still derail the "fast track" rules during this 90 calendar day consideration period. Even if the first obstacle regarding the notification of the Mexican negotiation is overcome in the next few weeks. Personally, I believe both obstacles will be cleared, but this will be an uncertain period.

A series of tasks that are preludes to formal negotiations can be, and are being carried out. Different trilateral work groups are already being formed. The fundamental focus was on the question regarding whether Canadian involvement could present complications (the reply was negative in each instance). Work has also begun regarding the exchange process of basic information, identifying questions and subjects which will have to be dealt with. Thus, the process of progressing in the pending has not been delayed by the "fast track" ques-

tion. All of these chores have to be carried out in any case.

Once formal negotiations are on their way, what will they cover? The joint communique of Presidents Salinas and Bush and Prime Minister Mulroney refers to a comprehensive FTA with the goal being the progressive elimination of obstacles to allow the flow of goods, services and investment, providing protection for intellectual property rights and establishing a mechanism for the settlement of disputes.

As worry some obstacles to the flow of goods, are tariff and non-tariff barriers. Regarding tariffs, I would consider as a final goal reducing tariffs to zero, with very few, if any, exceptions. It is quite likely, however, that this will be carried out in stages. For example, in the Canada United States agreement, some tariffs were eliminated during the first year, others have been reduced in phases over five years, and still others over ten years. As you can well imagine, this last group includes tariffs whose adaptation process is more difficult and internal resistance to eliminate them rapidly is stronger. It is interesting to note, in addition, that since the agreement was enforced, Canada and the United States have agreed to accelerate the programs for four hundred items, investing six thousand million dollars in bilateral trade and a second round of said revision is on its way.

As it stands currently, the average tariff applied by the United States is close to 4 per cent in contrast to close to 10 per cent for Mexico. For the time being, we do not have a comparable figure for Canada, but if memory serves me right the average is similar to Mexico's.

Currently, the highest tariff that Mexico applies is 20 per cent. On the other hand, the American average is lower, individual tariffs are much higher than 20 per cent in several instances, which is something that Mexican authorities repeatedly point out to us. The United States also have some seasonal tariffs regarding agricultural products or goods, something which Mexico has greatly complained about, and which has lead Mexico to apply similar tariffs in certain agricultural products recently. It is expected that all of these questions will be placed on the negotiating table.

Of course, non-tariff barriers are very many times more formidable than tariff barriers. The remaining areas requiring import permits, many of which are concentrated in the agricultural area, fall within this category. Automobile trade in Mexico is subjected to notorious restrictions. American quotas regarding textiles and clothing, as well as steel and iron products are of obvious interest for Mexico. The latter is by no means a comprehensive compilation. All of the latter restrictions will undoubtedly be the object of negotiation. in Mexico, the United States and in Canada.

Regarding services, as the American trade representative Carla Hills said in a recent declaration before a Senate Committee, the United States seeks additional opportunities in many areas, including banking services, shares and securities, transportation and insurance. Within these areas in particular, access to the Mexican market is restricted, and in some sectors, the American companies are denied entry to the Mexican market completely.

In the same speech, the American trade representative Carla Hills, stated regarding investment, "we seek an opportunity in an non-discriminatory investment environment in Mexico, free of investment requirements and restrictions which distort trade flow and investments".

The three governments agreed on the importance of establishing an effective mechanism for the settlement of disputes. An FTA will not eliminate all trade controversies. In fact, with the stimulus expected from even higher levels of trade, there can very well be an increase in such incidents. What a negotiated FTA can contribute is a stronger mechanism, more efficient in managing and solving such disputes in an equitable fashion.

As an example, the United States-Canada FTA provides, two formal dispute settlement mechanisms. One provides for revision by binational panels in the application of final countervailing and antidumping determinations as an alternative to revision by national courts. The panels' jurisdiction is limited in these cases to whether or not the case being reviewed was appropriately handled with respect to the domestic laws of the country which is taking the action. The second mechanism covers all the other disputes which arise under the FTA provisions, with the exception of financial services. These panels have considerable leeway in terms of the examination of the substance of the questions involved, and their decision can be the base for the cancellation of comparable concessions if no resolution is reached. In other words, there is some leverage.

The usefulness of having leverage mechanisms,

lies not in the possibility of causing damage, but in the knowledge that there is a price to pay for not complying with commitments—in other words, a dissuasion effect—. It provides a government with influence (means) with its own interest groups. If an objective panel has found that there is non compliance, some other interest must be sacrificed in case the corrective measures are not taken.

There are some, I am sure you are aware, who suggest including issues such as labor norms, employment insurance, drug trafficking cooperation, environmental norms, human rights and political reform in the negotiations. The real agenda of those who take this position is ruining the negotiations. However, there are others who have very marked opinions regarding these questions and are serious about them. The three governments, will, I am sure, agree that these matters are of great importance. Certainly from the American perspective, mustering enough Congressional support for an FTA may be influenced by what is occurring in these areas and fortunately there much which is positive happening in these areas. However, it is not like seeking to negotiate them within the FTA itself.

Turning now to the question of where support and opposition to the FTA is found, I will limit myself to consider these elements in the United States. You are familiarized with the attitude in Mexico and I am uninformed regarding these attitudes in Canada.

Regarding the United States, the majority of the large enterprises in the country, as well as the manufacturing groups are strong defenders of an FTA, e.g.,

Business Roundtable, the American Chamber of Commerce, the National Manufacturers' Association, the Mexico-United States Business Council, etc. I understand that a support letter is being circulated in the Congress signed by more than four hundred businesses and organizations. On the other hand, Unions have been quite opposed to an FTA. The AFL-CIO has as its number one legislative priority for 1991, to blocking an FTA.

Support for an FTA is generally strong among the members of Congress in the border States. They can present the example of the Maquiladora industry as evidence regarding how intensified economic activity on the Mexican side of the border is translated into an economic stimulus in the respective areas of the American border. Congressmen and Senators of the Midwest and New England industries, on the contrary, will be under pressure from their constituencies who are worried about the threat of their jobs being lost to Mexico. This does not mean that they will all be opposed, but that it will be more difficult to convince them of the advantages for their regions.

Currently there is widespread positive attitude in Congress towards Mexico. The achievements of the Mexican government in revitalizing the economy, liberalizing, deregulating, privatizing the economy, and specially in acting firmly to control the fiscal deficit are factors that will influence the American Congress. New attitudes toward the cooperation in drug trafficking, solution of environmental problems, and human rights issues, are questions which are now being focused. The Mexican government is car-

rying out a good publicity campaign. Thus, there are many things that are going well, but there is also an important opposition. In the end, for the American Executive to obtain approval to negotiate the package there will have to be an agreement that clearly addresses to American interests as well as the Mexican and Canadian interest concerns. I am confident that this can be achieved, but it will not be without danger, difficult moments and conflicts on both sides. This is the norm in foreign trade negotiations. We are dealing and speaking of affecting peoples' jobs, their businesses and their income in three countries. Of one thing we can rest assured, it will be a highly interesting negotiation.