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QUESTION, Professor Henry King, Jr.: Mr. Suchman, considering the realistic problems you've discussed, where do you think corrections have to be made in standing U.S. legislation in order for a free-trade agreement to work?

ANSWER, Mr. Suchman: The answer concerns both substantive and procedural issues. There have been a large number of procedural changes in the U.S. trade remedy laws over the past fifteen years. Before 1974, the U.S. countervailing duty law was one paragraph; now it's an entire chapter of a title statute. There is no simple answer to what changes need be made.

One area that will have to be considered is subsidies. This is of particular interest to Canada, which feels it must continue to subsidize to encourage industrial growth. What must first be done is an identification of those Canadian programs which the U.S. considers to be subsidies—some of which remarkably resemble the U.S. agricultural support programs—and perhaps an agreement not to take action against those considered important or essential. Another modification might be in the Fair Trade Practice statutes, with some special consideration given to Canadian producers, as part of a movement towards a truly North American market.

There are limits to what can be done procedurally, but Canada could be given special consideration under those statutes which are enforced within the discretion of the President. Canada is given special consideration now: before any action is taken against a broad range of imports under the escape clause, early consultations are held. And, in another area, while voluntary restraints in steel imports are being negotiated with ten different countries, none is being negotiated with Canada—an acknowledgment of Canada's special trading relationship.

QUESTION, Mr. Jon Fried: I would appreciate the views of both Mr. Suchman and Mr. Latimer as to whether a bilateral dispute settlement mechanism is desirable and/or feasible compared to unilateral domestic legislation. Also, is the intellectual property issue one of growing concern, particularly in the area of technology and manufacturing processes?

ANSWER, Mr. Suchman: First of all, I don't think there is likely to be established a "supernational court" to which countries would bring their antidumping complaints. It is possible that a bilateral commission could be established, though I think it would be difficult. At first, some-

thing less auspicious would have to be started—if a truly North American market were established.

One type of unfair trade practice is a violation of a patent, copyright or trademark. This concerns the area of "gray goods," which are legitimate trademarked goods produced abroad but brought into the U.S. in contravention of the licensee arrangement. Today, neither the U.S. courts or the President have excluded such products. The whole area of ownership rights and international trade needs further exploration.

ANSWER, Mr. Latimer: Regarding a dispute settlement system, I think it would be better to institutionalize the consultative process and avoid reaching the dispute stage. It is better to discuss a problem than to refer to a third party for settlement of a dispute.

COMMENT, Mr. Suchman: One of the problems in consultative mechanisms are the time restraints. For example, in a countervailing duty case under the Unfair Trade Practice laws, there are only eighty-five days from the time the petition is filed until the Commerce Department must make a preliminary determination, which begins accrual of potential liability. There is not much time to set up an international consultation to determine if there was an agreement not to countervail on this particular product. There has to be some loosening of U.S. procedure before a bilateral agreement can be functional.

QUESTION, Mr. Alan Wolff: Mr. Suchman talked about the difficulty of amending U.S. trade remedy laws in Congress. Would Mr. Latimer describe what difficulty there might be, in Canada, to exempt U.S. trade from Canadian remedy laws, if this were reciprocated by the United States?

ANSWER, Mr. Latimer: First of all, the most extensively used Canadian remedy law is the antidumping law, and 75% of the reasons for dumping would be removed if there were no tariff.

There is nothing in Canadian law that would preclude negotiating anything mutually agreeable. Politically, however, Canada is not prepared for the demise of a particular sector of the economy due to massive dumping. As to a reciprocal U.S. agreement, the disposition would be to deal with problems of fair competition injury by other methods than border measures.

A Canada-U.S. free-trade agreement would not be constrained by Canadian law. But, the Canadian economy has to be structurally brought up to date and made responsive to the international competitive environment. There are compelling reasons for this: a high tariff does not result in foreign investment supplying the Canadian market. Both politically and economically, Canada must adjust and become competitive, especially in the U.S.-Canadian market.

QUESTION, Mr. Jacques Roy: Mr. Suchman, is it possible, from an economic point of view, to reach an agreement with Canada whereby

neither country would have countervailing duty or antidumping investigations?

ANSWER, Mr. Suchman: From the U.S. perspective, it would be very difficult, if not impossible, at the present time to reach such an agreement. But, I think some sensible limits might be placed on these remedies, which are not the best way of protecting a market. Antidumping is a concept which has outlived its usefulness. Concentration should be directed to whether the goods are injurious and towards structural adjustments that can be made, rather than taking antidumping actions.

COMMENT, Professor Robert Hudec: It seems the prerequisite for doing something substantial about antidumping and countervailing duty is to change the conceptual framework of the problem. As long as Canadian producers are regarded as foreign producers operating in a different environment, there will always be some kind of compensatory mechanism to deal with perceived unfair trade practices.

If we are serious about a free-trade agreement, then the concept of intergovernmental agencies should be considered. With an "intergovernmental unfair trade body," which would utilize both antitrust and discriminatory pricing concepts, we could begin to make the kind of conceptual adjustments necessary to get political acceptance of a separate and more liberal regime.

In regards to the need for a dispute settlement mechanism, one of the uses of such a system is to aid government officials to make the decisions necessary for implementing the agreement. In any free-trade agreement there will be problems of interpretation. If dispute settlement is left only to a consultative process, the results will be less satisfactory than if an opinion is rendered by a third party which both countries have agreed to accept.

COMMENT, Mr. Frank Stone: It should be remembered that under the GATT both countries have access to a dispute settlement procedure, although it can only be used in interpreting the rules of the GATT. If Canada and the United States go beyond the GATT agreement, they could still use that mechanism to settle disputes which would otherwise come under the GATT and supplement the process with a bilateral agency.

COMMENT, Professor King: I'd like to call attention to the American and Canadian Bar Associations' work on this problem. I was chairman on the U.S. side and Bill Graham was a member of the Joint Working Group from the Canadian side. We have proposed a procedure for the arbitration of disputes which would be a good reference point for the dispositional type of settlement, as opposed to a joint solution type such as the IJC. In any event, this is an area which needs further exploration.