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External U.S. Commitments Affecting Possible Additional Products for Sectoral Integration**

*by Donald E. deKieffer**

I am going to focus primarily on the external commitments of the United States; Canada has very similar commitments. I think the fundamental question for both countries is whether these external commitments will or will not be a barrier to sectoral integration, as a practical matter.

Both Canada and the United States are members of the General Agreements on Tariffs and Trade. Article I of the GATT requires most-favored-nation (MFN) treatment, Article III requires national treatment and Article XXIV permits free-trade areas. The United States and Canada have numerous agreements with each other relating to all kinds of cross-border trade, but the U.S. has never made a notification to the GATT parties that it was seeking to enter a customs union with Canada and has not technically complied with the Article XXIV requirements. The argument is: nothing has been filed under Article XXIV because there was never an intention of becoming a customs union and, therefore, Article XXIV of the GATT does not apply. The GATT says more than it means. Very few countries have ever notified under Articles XXIV or XXV. The GATT rules become of interest to politicians only when lawyers in Washington argue that a particular barrier might hurt their clients.

The United States has a generalized system of preferences: special relationships with developing countries; the Caribbean Basin Initiative; the so-called free-trade zone with Israel; which may or may not fall under Article XXIV of the GATT. Even though the GATT rules appear to say that MFN and national treatment must be given to everybody, the GATT does not mean that, any more than Article I of the United States Constitution means Congress will make no laws abridging the freedom of speech. Congress can and does do that everyday; and the United States grants MFN, conditioned upon various historic and policy goals, on an almost daily basis.

The MFN principle is adhered to more in the briefs than in reality. Today there are at least seven different classes of countries with which the United States has trading relations. Most obvious is the Soviet Block,

** Remarks given at Conference.

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to which we do not give MFN treatment at all. There are all sorts of special relationships with Canada. There are different rules for the Caribbean Basin, with which there is a one-way free-trade area. There are different relationships, too, with other least developed countries. One might also point to the myriad of special agreements, most recently exemplified by the round of steel negotiations. Even with Section 201, the escape clause, we treat countries differently. In effect we maintain radically different trading policies, based not only upon the level of economic development, but also upon the needs of the foreign country's sectors—as well as the needs of our own sectors.

In the case of the Caribbean Basin Initiative, for example, we gave much less than is apparent. As soon as the Caribbean Basin Initiative (CBI) began, every industry that could possibly be affected went to its favorite lobbyist and got an exemption. Every major area is now exempt from coverage of CBI including textiles, footwear, luggage and rum. Grenada is reduced to making hockey pucks right now. And, as soon as the Grenada hockey puck industry reaches a point where it is a threat to either Canada or the United States, hockey pucks will become exempt as well.

There are central negotiations going on now in various areas. And, both as a matter of practice and as a matter of law, the barriers of the GATT, particularly Articles XXIV and XXV, have not been a particular impediment toward this practical "sectoral integration" under any circumstance. The AutoPact for example, was never notified to the GATT by either Canada or the United States as a move toward a customs union or a free-trade area. It just exists. Similarly, most of the so-called free-trade, or preferential treatment areas, given by our major trading partners such as the European Community, are never cited as an Article XXIV arrangement. There are many other examples, none of which have found the GATT to be a particular impediment.

In effect there has been a gentlemen's agreement among the major trading countries in the world: when we give something to a less developed country, or to our immediate neighbors, nobody is going to say too much about it. There has never, for example, been an explicit notification (although there have been several implicit notifications) within the EEC about what it is. It is a technical matter of law, particular with the entry of Spain, which gets little practical or political scrutiny. We allow these agreements to happen. I would suggest that outside of law review articles, Article XXIV has been moribund, because the GATT itself is an institution of gentlemen's agreements more than of confrontation.

I have spent an inordinate amount of time in Geneva in the past few years, making a nuisance of myself suing all matters of people for alleged sins against the sanctity of the GATT. But that has not been the practice of either the United States or of most of our trading partners over the past two decades. I think that we are unlikely to see serious challenges made to regional or sectoral integration between the United States and

Canada as regards the GATT rules. I would not regard any of the relevant provisions of the GATT as impediments to the kinds of sectoral integration we have been discussing. The fact is, much of the sectoral integration will be done as a matter of practice in any event or, to the extent sectoral integration already exists, it will either be made moot or enhanced by capital flows and by the ways companies, rather than countries, conduct their business.

A good example of this is the AutoPact. It could be argued that the AutoPact is one of the better examples of sectoral integration between the United States and Canada. It is my view, in regard to the AutoPact, that it is going to become increasingly problematic in the future. Every merger or joint venture which takes place between an American and a Japanese auto company will have a greater effect on trade flows in automotive products into and within North America than was ever perceived when the U.S.-Canadian Automotive Agreement was made. That is another reason why I believe that apparent violations of the GATT, such as non-reporting under Article XXIV, will not become significant barriers to sectoral integration.

Regarding other external commitments which the United States has, it is interesting that Canada has never objected to the kinds of things the United States has done, *vis-a-vis* third parties. For example, we certainly give greater preferences to the least developed countries, to the Caribbean Basin, and even to Israel, than we apparently do to Canada. Canadians would certainly be within their technical legal rights to raise some form of objection without the GATT. However, it is not astounding they have not done so. Canada has its own interests in other areas and there is little perception that these arrangements which the U.S. has made with other countries will effect Canada very much one way or the another.

Countries generally bring complaints to the GATT only when they are directly affected. Very few countries raise matters in the GATT as a matter of principle. The reason for that is that the GATT is not a particularly good forum for it. The meetings are closed and the level of rhetoric is tuned down. Neither Canada, nor the third world countries, nor the European Community have raised the kinds of technical legal arguments that are theoretically possible under the GATT.

Over the coming years, to the extent the trade policy continues along the track it is on now, there will be increasing moves by the United States to adopt other types of free-trade proposals. The Administration has already signaled publicly, on at least three occasions, that it would like to have discussions with the ASEAN countries. But I very much doubt there will be any Article XXIV notification of such administration proposals.

There are very good reasons for this. By the time these concessions are made and finally negotiated, most of the real teeth will have been pulled out of them. It will be as much a political as a practical endeavor.

That is another reason that the other trading partners of the United States, including Canada, have not made a point over their legal rights under the GATT.

In short, although the United States does have a significant number of third country and multilateral obligations which technically are covered by the GATT, it has never been accused of having fundamentally altered the most-favored-nation principal or having violated its GATT obligations. This is true despite the fact that in practice there are at least seven classes of countries that we treat differently.

Thank you.