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Discussion

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Discussion After the Speeches of Percy T. Eastham and Michael Smith

QUESTION, Professor King: One of the problems of the GATT has been that there is no effective dispute settlement provision. We are told here today that the dispute settlement provision in the Canada-U.S. FTA will be effective. Is this a model for the GATT or what is the U.S. position in terms of dispute settlement in the GATT negotiations?

ANSWER, Ambassador Smith: There could be an effective dispute settlement process in the GATT if the countries were willing to use it. Since the GATT is contractual in nature, and countries can block actions, it has fallen into disrepair, if not disrepute, over the course of the last ten years.

Recently there has been research into the recourse the GATT dispute settlement process provides. I do not know whether or not the FTA dispute settlement mechanism is the way to go. Countries in multilateral contacts are not likely to be willing to be bound in the way a bilateral agreement is binding. GATT may get around the binding nature of a FTA type agreement by saying that if a country does not agree with the action, it is free not to agree, but then it must pay for not agreeing. There is either retaliation or compensation.

It is true that one of the frustrations, at least in the United States with regard to the GATT, is that the dispute settlement process as now exercised, in general terms, has fallen into disrepute. A disputed problem could take years, if not decades, to be resolved and by that time the plaintiff has either died or moved on to other industries. This is one of the things on which the Canadians and the Americans have been working very hard.

I do think that the dispute settlement process has to be strengthened. I think most of the people at Punta del Este today recognize that, and that the danger involved if it is not strengthened is that people are going to settle their disputes elsewhere. Indeed, that is what has been seen in the last ten years. There was the emergence of what is called the gray area safeguard actions measures, where issues are settled outside of the GATT, to its detriment.

Most countries have given at least lip service to the idea that the process must be improved. Whether or not improvements actually will come either out of the Montreal meeting or out of the Uruguay Round, I do not know.

QUESTION, Mr. Miller: With respect to the apparel sector, and speaking of dispute settlement and the current situation with the pro-

posed Canadian measures to give some aid to Canadian producers and the American reaction to those measures, this might be characterized as a dispute. Is this dispute now resolved by Finance Minister Wilson's reduced measures? Where does that matter now stand? Can we consider it now resolved?

COMMENT, Mr. Coleman: I am not sure whether we would see that as a dispute or whether we would see the measures taken by Canada in the textile and clothing area as a follow-up operation of the FTA.

We did negotiate in the FTA the right to put in a few duty remission programs before the window closed on us. We did open a textile and clothing area recently. We also did some things that are totally open to us to do under the FTA and certainly under the GATT, and that was to unilaterally reduce tariffs on products coming into Canada from all sources.

I cannot see there would be any dispute about that, at least in legal terms, either under the FTA or under the GATT. I think it is more a political problem than a trade law problem that we are dealing with and a problem of the perception of the United States that our actions were ones that tended to reduce the margin of preference that they negotiated with us.

ANSWER, Ambassador Smith: I would say, as originally drafted, the proposal would have evolved into a major dispute. Whether or not the way it has been recrafted solves the problem in the eyes of the U.S. textile industry we will know in the not too distant future.

QUESTION, Mr. Miller: What if the situation had arisen two years after the FTA had been implemented? How would that kind of disagreement have been dealt with under the dispute resolution mechanism of the FTA?

ANSWER, Mr. Eastham: Two years from now we would not have the provision available that would allow us to draft our textile proposal. We have a window there that is open until June 30th or the effective date, which is later. That window is there and we are using some of that in the textile industry; it conflicted against a provision in the trade agreement, as I suspected it would.

QUESTION, Professor King: I want to throw another question to the both of you. We have been talking about blocs. Michael Smith talked about Europe's internal market and he said that, basically, we cannot get into Japan on a realistic basis. What I am concerned about is whether we are going to see a trend where there is more investment in countries than trade. Do you see a growth or a decline of trade where there is external investment within internal markets? Do either of you see any trends developing in that regard?

ANSWER, Ambassador Smith: I certainly do, and I am ambivalent about the consequences. Traditionally, the United States has been open to foreign investment; for the first 150 years of the United States, the

French and the Germans and the British had more invested in the United States than Americans did. So we have a long tradition. One can see it happening again in the last three or four years. There has been some concern expressed, as you see reflected in this conference, the trade bill and the Exon Florio Amendment, about thoroughly being taken over and all that sort of stuff.

Putting that issue aside from a trade point of view, why do people invest overseas? That is the way they get around trade barriers. The key then would be to get rid of the trade barriers and then you will see trade flow. There will always be business decisions made by the corporations. Sometimes it will be more economic for the firm to trade products from country *X* to country *Y* and other times it will be more economic for businesses in country *X* to invest in country *Y*, either in a joint venture or as a solely owned investment. I do not see those two acts as necessarily conflicting. What is the problem is if companies feel they have to invest overseas because they cannot otherwise get into that market. Some people say that one of the reasons why there is a lot of Japanese investment in the United States today is because the Japanese are afraid of U.S. protectionist measures and, therefore, they get in, if you will, under the fence so to speak. I think those claims are exaggerated; a Japanese business invests in the United States because it is a damn good place to invest.

But it is a worry to us whether or not there will be some skewering either of the trade account or of the investment account because of barriers still existing. I would say one aside: we are certainly seeing, from a U.S. point of view, an American hesitancy today to invest overseas as much as they used to, which is presumably some reaction to the debt problem. American banks and investors have gone through a feeling that the U.S. market is picking up, that it is a good place to invest, and that they do not want to take the risks that they used to take. I am very worried about the fact that the growth rate in direct overseas American investment is not increasing.

QUESTION, Professor King: Do you think that is a function of the exchange rate?

ANSWER, Ambassador Smith: Certainly to some extent, but I think it is not just the exchange rate. Decreasing overseas investment was there before the exchange rate dropped. It may be because investors are just nervous about external factors. I do not think you should underestimate the impact of what happened in Latin America in the late 1970s and early 1980s on U.S. trade and U.S. investment. In one swoop, in either 1981 or 1982, the situation really came to a crunch in Brazil, Mexico, Argentina and places like that. We lost twenty-eight percent of our market in a four month period. That is a huge drop in just four months and it has been a long time coming back.

QUESTION, Mr. Kirby: I would like to ask our Canadian speaker to comment. We have seen a dramatic improvement in the economic scene as a result of the U.S. and Canadian actions starting from 1984.

How does the Canada-U.S. Free Trade Agreement affect the question of investing in Canada?

ANSWER, Mr. Eastham: I think the answer is implicit in what Mike Smith already said. A primary objective for Canada in seeking, not just improved access, but more secure access was to improve the attractiveness of Canada as an investment place. In the kind of world we have today if an industry, be it Canadian, U.S., European or Japanese owned, is making an investment in North America and if the economies are more or less similar, they will put it in the big market. After all, why run the risks of incurring intervening trade action that would cut off their access?

So, in the kind of world we have now, there has to be not just ordinary comparative advantage but very clear comparative advantage to get this kind of investment in Canada and in the United States. That is one of the basic things we were trying to obtain through this agreement. We like to think that when it is implemented with the even playing field in investment, it will make Canada more attractive, not just to the Canadian and the U.S. investors, but to overseas investors as well. The FTA should have a major impact in terms of making Canada more attractive to investment.

QUESTION, Mr. Bartram: Ambassador Smith, would you comment on the possibility of a hemispheric market? Specifically, would you comment on the American reaction to the Mexican Maquiladoras Program along the border?

ANSWER, Ambassador Smith: Under the U.S. tariff law, you can export, for example, from the United States, "knock-downs" and send them across the Mexican border to have them assembled, packaged and sent back to the United States and the only tariff paid is on the value-added of the assembly operation. That is what we traditionally call "807." Under section 807 there is another provision having to do with jewelry. In essence it is a way to use the low cost labor available across the Rio Grande, and it has been in use a long time. As you can imagine, labor unions in the United States have not welcomed this. It is exporting labor and it is certainly, by no means, only a textile or apparel issue thing. A lot of investment from Japan, Korea, Taiwan, and Europe is setting up assembly plants on the other side of the border and their shipments are going into that huge market of the United States.

Now you ask, what is the American reaction to the Maquiladoras? It has been there a long time and I think it will stay there.

Even in the textile industry there have been arguments made that perhaps the Maquiladoras should even be improved or expanded somewhat. From the U.S. point of view, it is in our national interest to see that industry thrives down there. It is a definite economic stimulus to Mexico. It provides employment to Mexicans who would otherwise probably come across the border in even greater numbers than they do

now, which from a social-economic point of view, means that it would be in our interest to help them out. Mexico needs that employment opportunity and that is in our interest. It is also a very substantial export for the United States to the extent of the supplies going from the United States down to Mexico, so it has not been a one way street. I have had to testify before the Congress over a number of years about the Maquiladoras industry. I happen to think it is a good idea. I think that is generally the viewpoint of not only the administration, but the Congress as well. Generally speaking, there are certain elements in the United States who do not want the Maquiladoras industry because they believe it is a threat to their employment. I do not think the facts substantiate that fear.

QUESTION, Professor King: In connection with the less developed countries ("LDCs"), the fact that the LDCs look at the United States as being in charge of the world, as trading blocs develop, for example, in Europe or North America, what affect is this going to have on the LDCs? For example, we have a generalized system of preferences whereby the goods come in from LDCs without a tariff. What do you forecast as the outlook for the LDCs, particularly given the fact that they have a huge debt they want to pay off as best they can?

ANSWER, Ambassador Smith: First, let me be sure to clarify my remarks. I was not advocating the use of the FTA to establish blocs. I was saying one has to look. This might be an unintended result.

It is a difficult question when you talk about the LDCs because you do not want to establish a bloc that will harm them. We went to a FTA because that was in our economic interest to do so. The worst thing that could probably happen is for the LDCs to feel they have to pick sides in this matter. That would be unfortunate. The GATT, therefore, has certain rules that require Canada and the United States to take this beast (FTA) over to Geneva and provide the necessary assurances so that LDCs and other developed countries do not feel as though their rights have been infringed. It is a problem when the LDCs say "Gee, here is the European Community and here is the United States and Canada and here is Japan, and do we have to choose sides?" I do not think they have to choose sides. The reality is that the United States is the major market and will continue to be for some foreseeable time. I would hope, just because of a parochial interest, to see other countries, particularly Japan, open up their markets a little more. I would not overemphasize this problem, Henry, but it is something to be aware of.

QUESTION, Mr. Coleman: Ambassador Smith raised the important question of whether or not Japan would ever truly liberalize. I wonder if he feels, despite the things that both Canada and the United States say of the GATT and in the FTA, that if Japan ever does truly liberalize it will be more through bilateral pressure, particularly from the United States, than any other source?

ANSWER, Ambassador Smith: That is a good question which is

going to be very difficult to answer now. The past is prolonged, the future is not necessarily very bright. On the other hand, we have found one issue that we have been able to heighten in Japan to help with the negotiations; we have been able to achieve some change in the mindset in Japan in regard to certain agriculture programs. The cost of hamburgers, chicken, or rice has been part of a publicity campaign and we have seen that as the Japanese take this into account, they are increasingly nervous about their perfection of agriculture policy. They have submitted to GATT dispute settlement and they have said they are going to abide by the decision. The fundamental question is whether they are doing this voluntarily or because we keep putting the pressure on them?

We hope the Japanese consumer will insist on it. It is too early to say, clearly in volume terms, although the recent Japanese figures are very encouraging. The exports into Japan have gone up. Is this simply a function of the exchange rate or because the Japanese now are accepting the idea that imports are not so bad?

QUESTION, Mr. Knopf: A question for Mr. Smith. You had mentioned, and I hope I am paraphrasing you accurately, that you hope that the FTA would be a stimulus to the GATT because the GATT has become a bit ossified.

The area that I am involved in primarily is intellectual property, and we are well aware of the American attitude towards the World Intellectual Property Organization ("WIPO"). There seems to be an interesting phenomena developing and I am interested in your view as to whether or not my perception is accurate that, for example, the United States is trying to move intellectual property issues from WIPO and into the GATT, yet is concerned that the GATT is not working very well. Therefore the United States hopes to use bilateralism as a stimulus, a prod, to revive the GATT. But, in response to Mr. Coleman you said that one of the great problems with bilateralism is nothing other than the fact that millions of bureaucrats are needed to negotiate all of these things, whether it be semiconductor chip interim protection extension orders or whatever.

Is it leading all back to balkanization or is there a consistency?

ANSWER, Ambassador Smith: On the one hand, we are trying to get the GATT back into shape, and prepared for the 1980s and 1990s. Our fundamental goal is that we want the GATT to work. Now, to bring the GATT into the 21st century we have to take other organizations, like WIPO, and use them in cooperation with the GATT.

From our point of view, intellectual property is not a WIPO issue; it is a trade issue. Since it has a trade issue aspect, that element of trade belongs in the GATT. WIPO has no teeth to enforce anything. GATT presumably has teeth and that is why we want a shared responsibility.

I do not think there is anything inconsistent about that. There is a sequence of things: we have got to get the GATT back together again. If the GATT gets back together, it has to take on the new issues. If it takes

on the new issues, it has to work. We have been willing to work with the GATT because we are coming at it from this point of view; if these issues have a trade element, the GATT has to take them on.

COMMENT, Professor King: I think that both these gentlemen, Ambassador Smith and Percy Eastham, have given us a very fine start and given us a broad picture with which to examine more defined areas. Thank you, gentlemen.

