

however, we did achieve a number of our key objectives on subsidies — rules satisfactory to Canada on subsidy definitions, which protected from attack subsidies in support of reducing regional disparity, in support of research and development, and in support of efforts to make industries environmentally sound. We won these gains because our interests and those of key allies, such as the European Union, converged.

Resolving these issues takes time. While we could not deal with resource pricing in our bilateral negotiations or in the Uruguay Round, we may well be able to do it next time if we can get our act together domestically and if we can conceive a workable strategy to develop a coalition of like-minded countries, as we did on the questions of regional disparity, research and development, and the environment.

No doubt, work is under way on such a strategy somewhere in the federal government.

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CULTURE AND LUMBER: FREE TRADE THE AMERICAN WAY

BY MAUDE BARLOW

The central argument put forward by the Mulroney Tories, when they entered negotiations for the Canada-United States Free Trade Agreement (FTA), was the need to come up with a common and binding set of rules to settle trade disputes between Canada and the United States. These would allow Canadian exporters to escape the arbitrary use of American trade-remedy laws governing anti-dumping and countervailing cases, and end years of trade skirmishes that had limited the access of Canadian goods to the American market.

It was agreed that, within seven years, a clear subsidies code would be completed, a promise Prime Minister Jean Chrétien repeated when he signed the North American Free Trade Agreement (NAFTA) in 1993. In fact, he said that Canada's continued support for free trade was conditional on developing these rules within the two years remaining of the original understanding.

HOLLOW PROMISES

The seven years have now come and gone and there is no sight of the promised rules, nor any prospect for them. It has become clear that, just as many of us feared, there never was any real intention of completing a binding code. All we have, and are ever likely to have, are dispute resolution panels that judge whether American laws have been correctly applied; the United States is free to change its laws when a panel does not rule in its favour.

In fact, International Trade Minister Art Eggleton re-

cently admitted as much, saying that the current saw-off is the best we can hope for. Unfortunately for Canada, we continue to be on the losing end of most disputes which, if anything, have intensified since we first entered a free trade arrangement with the United States. Two cases in particular demonstrate the hollow nature of the promise to establish a more equitable system.

The stakes in the softwood lumber dispute are very high for Canada for it is our third-largest export, worth about \$8 billion a year.

Our government recently agreed to significantly reduce exports or place an export tax on softwood lumber shipments to the United States, in spite of winning several consecutive trade panels. We gave in because each time it lost a dispute with Canada, the United States simply changed its law to favour its own industry, as it is allowed to do under the terms of the NAFTA.

The stakes in the softwood lumber dispute are very high for Canada for it is our third-largest export, worth about \$8 billion a year. In fact, one of the reasons that the Canadian government wanted free trade in the first place was that it wished to avoid a repeat of the 1986 export tax Washington

forced it to place on all softwood lumber exports to the United States. However, the deal has not been worth the paper it is written on to Canadian lumber producers.

In 1991, American trade authorities imposed a tariff on Canadian exports; Canada appealed before a binational trade panel and won, and the tariffs were removed. But the industry fought on, forcing the United States government to change the rules and making it more difficult for binational panels to overturn American tariff decisions. Canada entered negotiations knowing it now had less chance of winning another panel under the new rules. British Columbia decided to impose a provincial export quota instead of increasing stumpage fees and Ottawa made the export tax national.

The "deal" has not satisfied the American lumber industry. A former Canadian Ambassador to the World Trade Organization says that the deal will never last the five years of its term. Under the NAFTA rules, the industry can, and likely will, launch another challenge in the American courts.

CULTURAL EXEMPTION "VICTORY"

Another area of ostensible argument was culture. The Mulroney government claimed it had scored a great victory when it gained an "exemption" for Canadian culture in the FTA, and the Chrétien government pointed to the same "win" when it signed the NAFTA. But claims of victory on this front are hollow.

The terms on culture set out in the FTA were adopted by the NAFTA Annex 2106. While one article (FTA 2005.1) exempts the cultural industry from the agreement with the exception of tariff elimination, divestiture of an indirect

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capital to Cuba. He correctly views such reforms as potentially threatening to his continued control over the Cuban people: Cubans with increased access to property and money will be less dependent on the state and more able to resist state control. This explains the recent increase in political repression in Cuba. The Cuban Government is attempting to reinforce its control over the Cuban people prior to embarking on the next wave of needed, and politically threatening, economic reforms.

If Canadians and other foreigners truly favour a peaceful transition to a democratic regime in Cuba that respects human rights, they should begin pressing the Castro Government to reform not only economically, but politically as well. Canada, which has had close relations with the Castro regime for several decades, is ideally positioned to take the lead in this regard. Top priority should be given to holding free and fair elections in the presence of international observers.

An elected civilian regime in Cuba would produce both popular and congressional support in the United States for lifting the embargo. It would also restore the value of the investments that Canadians and others have made on the island. Most important, it would finally allow the Cuban people to speak for themselves regarding how and by whom they wish to be governed. 🍁

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acquisition, and transmission rights, another (FTA 2005.2) puts culture right back in by giving the Americans the right to retaliate against Canada for "actions" the United States deems "inconsistent" with it. Yet another provision (FTA 2011.2) permits the United States to circumvent the dispute settlement procedure when it retaliates. Other sections of the agreement, particularly those dealing with Investment, Competition Policy, and Monopolies also infringe on the right of Canadians to protect their cultural policy.

This means that the United States has the legal right to unilaterally decide if a Canadian cultural measure is "inconsistent" with NAFTA, to retaliate against Canada, and to select the nature and severity of the retaliation. The United States is the accuser, the umpire, and the enforcer. The late Peter Murphy, chief American FTA negotiator, explained to journalist Marci McDonald how Canadians just did not "get it": "Because [of] the way the agreement is written, if there's a problem, the US will take action — and it doesn't have to show any injury. The retaliatory possibilities are huge."

Canada has no legal rights whatsoever. It cannot even request a panel to judge whether American accusations are justified and, if so, to ensure American retaliation is commensurate with the offence. Further, in signing the NAFTA, Canada surrendered important GATT cultural protections which included the freedom to act to sustain its cultural industry by virtually any measure that did not impair tariff concessions, the establishment of screen quotas that "require the exhibition of

cinematographic film by national origin," and the right to a panel to judge American complaints on the basis of GATT law and not in accordance with the vested interests of the American broadcasting, publishing, film, and recording industries.

It is time to admit that Canada is never going to get the fair trade rules we were promised and to understand that we do not have "free trade" even in theory.

Both the Mulroney Conservatives and the Chrétien Liberals have continued to assert the claim that NAFTA protects Canadian culture while giving in, time and again, to American demands on key Canadian cultural issues such as film distribution and book publishing. Complying with American demands has the advantage of avoiding retaliation and enabling politicians to continue to sell the illusion that the agreement protects Canadian culture.

TARGETTING CANADA

The Chrétien government has finally taken several mild measures to protect Canadian culture — one on split-run editions of *Sports Illustrated* and the other on the big-six book retailer Borders. But the American industry has threatened retaliation and the Secretary of Commerce has stated that the tax on *Sports Illustrated* directly conflicts with NAFTA.

United States Trade Representative Mickey Kantor had Canadian cultural disputes specifically in mind when he recently announced the creation of a "hit squad" to apply American trade law to "unfair" trade practices around the world, and named Canada as one of the targets. The smoke-and-mirrors "cultural exemption" will not protect Canadian culture against these threats any more than the non-existent disputes code protected Canadian lumber.

It is time to admit that Canada is never going to get the fair trade rules we were promised and to understand that we do not have "free trade" even in theory. Stelco's President, Frederick Telmer, says that American trade laws are sacrosanct and their preservation was a precondition for the United States to sign the NAFTA: "We do not have free trade with the United States. Anybody who thinks otherwise is living in a dream world."

Therefore, it is also time to admit what these arguments were really about — to impose an American-style free market model on Canada complete with weakened government, low corporate tax rates, privatized social programs, a deregulated environmental regime, a contingency work force, and class warfare. It is time to reopen this debate. 🍁

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