BERTRAND CASE

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irrelevant sideshow?

If Canada were an anarchic society ruled by guns and force of arms, then law and legality would, indeed, be irrelevant to this debate. But Canada is an advanced liberal-democratic state where law and the rule of law matter. The rule of law also matters to the other G7 countries whose decision on whether to recognize a Quebec state following independence would be of critical importance.

This is not to suggest that law will determine political outcomes. But law is far from irrelevant to those outcomes — as the Quebec government's insistence that its position is consistent with international law unwittingly demonstrates. This is why Ottawa did the right thing by intervening in the Bertrand case. Here's hoping that the federal government has the fortitude to stay the course despite the heavy criticism that it will face on this issue from its friends as well as its foes in the months ahead.

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WHY QUEBEC IS AFRAID OF A NAFTA-TYPE ARRANGEMENT WITH CANADA

BY ALAN M. RUGMAN

With the prospect of another Quebec referendum, it is time for a realistic analysis of how a separate Quebec would conduct its economic relationship with Canada. In the October 1995 referendum, the Quebec separatists argued an ambiguous position concerning future trade relationships with Canada.

A separate Quebec would like to continue the current customs union with Canada and also enter the North American Free Trade Agreement (NAFTA). This, indeed, would be the best of both worlds from the separatist perspective, but neither is likely to occur.

The reason lies in the complex institutional fabric of the NAFTA, a free trade treaty between three very different countries of Canada, the United States, and Mexico. If Quebec is to be a separate country, it will have to be treated like Mexico from the viewpoint of the rest of Canada. This will break up the existing customs union and create great economic hardship in Quebec.

FREE TRADE VS. CUSTOMS UNION

To see this requires that we understand the distinction between a free trade agreement (like the NAFTA) and a customs union or common market (like the current Canadian federation). In a free trade area there is tariff-free movement of goods and services, national treatment for foreign investment and little else. In contrast, a customs union provides for much deeper economic integration, especially with the free movement of people and capital.

As a result, a customs union requires some form of political integration, as has occurred in the European Common Market (now the European Union). But as Quebec wants independence from Canada, a sovereign Quebec cannot realistically expect to partake in such a deep customs union or common market with Canada.

An alternative to the customs union demanded by the PQ would be to extend a NAFTA-type arrangement to Quebec. Then Quebec would essentially be like Mexico — a trading partner of Canada but one at a respectable political distance.

Although Quebec wants to use the Canadian dollar and continue with free trade, there is no economic reason for Canada to extend these preferences to an independent Quebec. Instead, Canada should opt for a NAFTA-type arrangement with Quebec.

The potential trade and investment linkages between a sovereign Quebec and the rest of Canada require more careful consideration than was given during the referendum campaign. The Parti Québécois (PQ) position is to request a continuation of the current customs union, with free trade in goods and services, labour mobility, a common currency, and a sharing (with the percentage amount disputed) of the interest on Canada's national debt. Each of these items needs to be considered separately. By unbundling the PQ package of economic demands, Canada can gain considerable negotiating leverage.

An alternative to the customs union demanded by the PQ would be to extend a NAFTA-type arrangement to Quebec. Then Quebec would essentially be like Mexico — a trading partner of Canada but one at a respectable political distance. For example, if Quebec has a NAFTA-type arrangement with the rest of Canada, there would no longer be free trade in goods and services and national treatment for investment. However, as in the NAFTA, there would be many sectoral exceptions from free trade and also many reservations from the national treatment principle. Let us consider these issues in turn.

CONSEQUENCES OF A FREE TRADE ARRANGEMENT WITH QUEBEC

First, a free trade arrangement would not give Quebec full and secure access to either the Canadian or the American market. Canada would be able to use rules of origin (as does the United States against Mexico) to keep out many manufactured goods, including automobiles. Canada would have the legal right to start using countervailing duties (CVD) and anti-dumping (AD) actions against subsidized and dumped Quebec exports to Canada. Given the large role of the state in the Quebec economy, there would be a great deal of business for CVD and AD trade lawyers in Toronto and Vancouver. Quebec could, of course, reciprocate with its own CVD and AD actions against Canada but, being only one-quarter of the size of Canada, thist would be as feeble a weapon as Canada's use of CVD and AD in a trade war with the much larger United States.

There are many other NAFTA-based trade and investment measures that can be used by Canadian business to deny Quebec competitors full and free access to the Canadian market. This is why the PQ keeps demanding the continuation of the current customs union rather than risk the lower market access accorded by a NAFTA-type arrangement.

Second, while the NAFTA does extend national treatment for investment, and the right of establishment, it only extends this privilege to selected sectors. For example, under the current terms of the NAFTA, the exempted service sectors include culture, health, social services, education, and transportation. In each of these areas, Canada would be legally entitled to introduce discriminatory measures against Quebec in order to deny citizens of Quebec access to these services in Canada and deny them the right to do business in Canada. (Quebec could, of course, deny Canada access to its business area as well, but the one-quarter-the-size deterrent holds again.)

There is, in fact, more of a rationale for creating two parallel systems in these same areas, since the Province of Quebec has already assumed jurisdiction over the delivery of health, social services, and education, and there is no reason for Canada to carry on any obligation in financing these sectors. However, in transportation, there will be major adjustment costs as airlines, railways, most truck firms, and related entities all relocate to Canada as the larger home market base. Quebec would then have to build its own systems.

In the same way, beer is exempted from the national treatment provisions of the NAFTA, and the two major brewers would have to treat Quebec as a foreign market and separate their production across the two jurisdictions. Here, also, AD actions could be used by Canada to keep out Quebec beer and other alcoholic beverages, as can the United States under the NAFTA.

Obviously, the PQ has fudged the fact that all Quebec citizens would be foreigners in the rest of Canada, and that Canada would literally have to pass new laws to even permit immigration of such foreigners, who have limited rights of entry under the NAFTA.

Third, Quebec agriculture would be largely excluded from the free access to the rest of Canada it currently enjoys in the existing customs union. Under the terms of the NAFTA, Quebec would not only lose subsidies from Ottawa (calculated at about one-million dollars for the Quebec dairy sector) but, if the new government of Quebec replaces such subsidies with its own, the exports of such subsidized products to the rest of Canada could be met with CVD actions. This would serve to deny Quebec's agricultural sector the open access to the Canadian market it currently enjoys. (In turn, any potential Quebec CVDS against Canadian exports would have a minor effect since the American market is much more important to Canada.)

Fourth, while a NAFTA-type arrangement would allow a limited number of Quebec business professionals to secure "temporary entry" to do business in the rest of Canada (in return for access of Canadian professionals to Quebec), there would be no labour mobility as currently exists in the Canadian customs union. Therefore, people wishing to leave Montreal and work elsewhere in Canada would need the equivalent of the American "green card" to be able to do so. The rest of Canada would probably have to introduce a range of classifications (or quotas) for different groups, for example, giving the highest preference to native peoples who would retain rights of entry under previous treaties, but therefore a lower quota for Montreal anglophones.

This would be a very difficult arrangement, but it is how the NAFTA operates. Obviously, the PQ has fudged the fact that all Quebec citizens would be foreigners in the rest of Canada, and that Canada would literally have to pass new laws to even permit immigration of such foreigners, who have limited rights of entry under the NAFTA.

COSTS OF SEPARATION

The conclusion of this very simple investigation of how an independent Quebec and the rest of Canada would conduct a NAFTA-type arrangement is that there would be immense economic costs to Quebec's separation. The P.Q. wish to disguise these costs by assuming that the rest of Canada can be blackmailed into a continuation of the current customs union. But a NAFTA-type arrangement would not be a customs union. It would involve much less market access for Quebec to Canada. Such an arrangement would introduce many new trade and investment weapons to be used by Canadians against a foreign country.

It is obvious from this analysis that both Quebec and Canada are far better-off continuing as one country than as two. But if Quebec does separate, then Canadians should begin to think of it as another Mexico. Under the NAFTA, Canada does business with Mexicans, but Mexicans are not Canadians. Quebec can be an independent political entity like Mexico if it votes that way, but don't expect the rest of Canada to treat a new Quebec nation any differently than it treats Mexico.

A new focus on what the NAFTA actually means for Quebec would be a refreshing change to the P.Q. propaganda about continuing the customs union. We need to replace the long silence in Ottawa about the true economic costs of Quebec's separation from Canada with some level-headed analysis of what the NAFTA really means for Quebec.

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