

FREE TRADE IN WASHINGTON: ALL POLITICS, ALL THE TIME

David T. Jones

If all politics are local, then in Washington, all trade is politics. Twenty years after the FTA and 15 years after the NAFTA, former US diplomat David Jones looks at the results and prospects for free trade from Washington, where lobbyists and special interests are deeply entrenched, where Congress is rarely out of campaign mode, and where the President of the United States, even when he enjoys fast track authority from Congress to pass trade agreements “up or down” without amendment, has great difficulty in securing agreement for bilateral and regional FTAs.



Toute politique est locale, dit-on. Et vu de Washington, tout ce qui touche au commerce est politique. Vingt ans après l'Accord de libre-échange et 15 ans après l'ALENA, l'ancien diplomate américain David Jones analyse les résultats et perspectives du libre-échange depuis la capitale des États-Unis, où les lobbys et intérêts particuliers exercent une énorme influence, où le Congrès est presque toujours en mode de campagne et où le président — même en profitant de la procédure accélérée du Congrès pour faire adopter sans amendements des ententes commerciales — n'arrive que très difficilement à concrétiser l'adhésion aux accords de libre-échange bilatéraux et régionaux.

It might help in understanding US attitudes to the NAFTA to visualize the American perspective of North American geography. From this optic, the continent is a house: Canada is the roof/attic; the United States is the main structure; and Mexico is the basement. Unless the roof has blown off, the home owner is unconcerned with it; the roof is there. The worries come from the basement.

And so it was and has been with NAFTA in particular over the last 15 years and free trade more generally in the 20 years since the negotiation of the Canada-US Free Trade Agreement. A reflective observer recalled that during the NAFTA discussions in the US, American concerns paid little/no attention to Canada, or even less than usual. Instead they were directed at Mexico with all of the issues associated with cheap Mexican products, “outsourcing” of jobs, and degradation of environment standards. Ross Perot built his 1992 presidential campaign substantially around the prospect of a “great sucking sound” of US jobs going down the drain into Mexico.

So if Canada was expressing its horror over the prospect of NAFTA by revisiting and recycling all of its old arguments against its bilateral Free Trade Agreement with the US, the United States was directing its angst at addressing the challenge from Mexico. It was perhaps Al Gore's greatest moment when, as Vice President, he countered Perot in a debate over NAFTA's prospects in November 1993 (on CNN's *Larry King Live*). There were those who anticipated

Perot would dismember Gore like a chainsaw chewing up a wooden Indian; however, for one night at least, Gore effectively rebutted Perot.

More essentially, throughout the period leading to NAFTA and now in the years of its implementation, both Canada and Mexico have had essentially one problem: the United States. The United States has two — and Canada is not always the most important of these.

It is possible that the conference held in Washington in December 2002 to commemorate the 10th year after the signing of NAFTA marked the high point of enthusiasm and expectations for continental and global free trade. The Washington conference featured congratulatory speeches by the first President Bush, former president Salinas and former Prime Minister Mulroney. Their emphasis was on the vast expansion of trade among the three countries, and they cited positives regarding trade expansion, job creation and prosperity. They recognized various complications, but, in the spirit of the conference, these were brushed aside. The speakers and the accompanying panels anticipated a successful “Doha Round” in international free trade and projected a Free Trade Agreement of the Americas (FTAA) by 2005.

Now “dead as a Doha” is the sobriquet for expanding international free trade and the concept of an FTAA by 2005 perhaps was the epitome of wild optimism.

The high-water mark of free trade has certainly receded; its proponents are battling to hold what has been accomplished while fighting simultaneously on multiple fronts to obtain agreement for marginal to second-echelon free trade agreements; implement aspects of already ratified agreements; and find workable mechanisms to address specific problems resulting from disagreement over the agreements.

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And so it goes: globalization has generated its country-specific push-back. No democratically elected politician wants to tell John Smith bluntly, "Go back to school and train for a better job" or "Suck it up, move to Texas, and get another job." John Smith votes and at age 55 he needs more than a McJob, but doesn't have the time or inclination for protracted training.

In the United States, even during one of our strongest economic surges, the anti-free traders have greater political weight. A 2006 survey by the Chicago Council on Global Affairs indicated that 67 percent of respondents believed trade adversely affected US workers. To use a Carter presidency term, there is a "malaise" in areas of the

economy; there is a sense that economic circumstances are tighter, that "outsourcing" can be in anyone's future, and the lifetime job is a lifetime ago.

Thus prosperity is matched with tension, and the liabilities of free trade — when linked with the decline of the "good jobs" for high school graduates and associated with loss of 2 million manufacturing jobs — has reduced social willingness to accept gratuitous change. The efficiencies of

"just in time" supply chains leave no slack in the system, generating the reality that any problem could prompt layoffs or job loss. As well as outsourcing, there is the perception of wage stagnation, slower recovery than normal from the 2001-02 recession and a fraying of the social safety net — problems that Canadians can also appreciate. This sense of running harder just to stay in place while simultaneously sensing that the top 10 percent of the workforce is benefiting disproportionately poisons the popular willingness to welcome more change — which is defined as more competition/insecurity.

And there are special interest groups that churn out analyses "proving" that NAFTA is bad for Canada, Mexico and the United States. For them NAFTA damages agriculture in Mexico and creates only low-wage jobs; it costs jobs and closes plants in Canada; and it destroys jobs and increases the US trade deficit. One particularly artful analysis claimed that NAFTA had cost the US a million jobs — by contending that the value of all the additional imports under NAFTA would have converted into a million US jobs. It blithely ignored

the question as to whether without NAFTA these imports would have been produced at all, let alone produced in the US (or imported from a non-NAFTA country).

Consequently, there is no longer the expectation that *any* free trade proposal, no matter how ostensibly anodyne, will secure easy congressional passage. Indeed, the converse may be true: if an agreement has minimal effect, it may be opposed simply because political critics can be accommodated without significant economic costs. And there apparently is no agreement that can be designed to satisfy environmental and/or labour critics without substantially transforming the other treaty partner into one with US standards (or better). Moreover, since the 2006 election, the Democrats, who have been axiomatic skeptics of free trade, control both houses of Congress.

To be sure, the environmental and labour objections are essentially red herrings designed to derail agreements rather than upgrade standards elsewhere; however, there are real environmental abuses and questionable labour practices in many countries. These realities have new poignancy in the current politico-economic environment in Washington.

Despite the steadily rising storm, the US government is pressing forward with what some would regard as an ambitious program of free trade agreements. The Bush administration is coordinating intensively and working with Congress on virtually a daily basis to promote a string of pending free trade arrangements. At this juncture, agreements with Peru, Columbia, Panama and the Republic of Korea (ROK) have effectively been completed and are in queue for congressional ratification. While each has problems, the current objective is to present them in the order listed reflecting the timing of their completion. Thus,



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CNN's Larry King, Vice President Al Gore and Ross Perot in the famous NAFTA debate in November, 1993. Perot alleged a "giant sucking sound" in US job losses, but on this night he was mostly sucking air. Gore won, hands down.

experts see a child labour problem in the prospective Peru agreement and one over labour/union issues for Panama — and these are the easy ones. Indeed, the US government is now requiring Panama and Peru, which have already ratified the agreements, to change their labour and environmental laws before the US House of Representatives will vote on them.

The stakes are particularly high for the Colombia accord. Currently, Colombia is regarded as the closest US ally in South America; Washington certainly has a gigantic political stake in the success of the democratically elect-

ed President Alvaro Uribe. His ongoing efforts to fight narcoterrorism, control/disband right-wing militias and stave off domestic political elements tempted by the Venezuela-Chavez example have been taken at considerable personal and political risk. But Colombia is still very much a work in progress; human rights violations, notably against union leaders, are considerable — and senior senators appear happy to seek perfection and reject the "good enough." That the evolution of Colombian politics and society might be regarded as a (rare) Bush administration success is an added albeit unac-

knowledged incentive in some quarters to criticize Uribe's Colombia.

The Korea accord would be the largest agreement since NAFTA. Korea is now the fifth-largest US trading partner and a major importer of high technology and agricultural products. As such the agreement will receive particular attention — and there remain significant unresolved problems, notably access of US motor vehicles to the Korean domestic market and restrictions on US beef imports (still suffering from BSE limits).

The normal domestic/political/congressional difficulties are accentuated

ated by the expiration in July 2007 of “fast-track” authority, that is, the requirement that a trade agreement be voted “up or down” by Congress as it is presented, rather than being subject to amendment — and hence returned to the negotiating table. Reopening any agreement, even for ostensibly anodyne adjustments, offers each side the opportunity to refight previous battles, perhaps assuring that agreement runs into the sand. Although the four, already negotiated free trade agreements have been “grandfathered” under “fast track,” the refusal to re-authorize fast-track authority reflects the attitudinal reality in Congress and the country and thus the recognition within the Bush administration of how imperiled the pending agreements are.

The Central America Free Trade Agreement (CAFTA) may illustrate the problems facing free trade. Although the economies of the Caribbean states are minimal — and the agreement provided US access to economic areas not previously open to US products — ratification was resisted furiously, and in the end, it passed by only one vote in July 2005. Nor has subsequent implementation been easy; side letters and financial assistance, e.g., to assist in environmental compliance, have been necessary.

Thus, so far as the prospects for the upcoming free trade agreements, one observer said frankly, “we will have to buy votes” to get them ratified. Not with bags of cash, but with trade-offs on other issues, favours in multiple areas, “ear marks” for special projects in individual states and districts. And it may very well not work: the combination of a weak, lame-duck administration heading toward an election year with environmentalists, labour unions and human rights advocates opposed to one or another of the proposed agreements could push the effort into the “too hard box” to await the next

occupant of the White House in 2009. The Bush administration is risk adverse, and it is not as if the USG population was pounding its political representatives to support these agreements.

And consequently, the Free Trade Agreement of the Americas has also moved to the sidelines. It has been renamed the Alliance for Growth and Progress or (after a January *Wall Street Journal* op-ed by former US Trade Representative

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Robert Zoellick) the “Association of American Free Trade Agreements.” Nevertheless, whatever the nomenclature, work on it has been deferred until after completing the work to confirm the country-specific free trade agreements. Thus it would be no sooner than spring 2008 before a US effort began — and observers might be skeptical about its prospects, even assuming that the present administration secured congressional approval of the outstanding agreements.

Of course, getting to agreement is just the starting point. Such agreements are like marriages: they may be made in Heaven, but the maintenance is done day by day on Earth. And maintenance is often greasy, tedious, and protracted.

For example, Canadians doubtless have been frustrated over softwood lumber issues, but Mexicans have been equally vexed by a NAFTA issue on which Canada has had no significant difficulty: cross-border trucking. This effort — to deliver international cargos from Mexico to the United States has been repeatedly frustrated by a combination of congressional, labour and environmental concerns. In the process to resolve this issue, dating to NAFTA’s inception, Mexico won a NAFTA dispute resolution panel decision; a US Supreme Court decision ostensibly cleared the road for Department of Transportation implementation; and the Bush administration met 22 congressional requirements — but implementation languishes. The semi-unspoken concern remains immigration issues.

And then there was/is softwood lumber. When you have a dispute that precedes the creation of Canada, it is one that is likely to endure until North America is clear cut. Indeed, it may be essentially systemic, reflecting the differences between most Canadian lumber production (operating with government support mechanisms) versus US free enterprise production. There are, for example, no difficulties with Canadian lumber produced under free enterprise in the Atlantic provinces. Consequently, it would be feckless to recount the back-and-forths of this dispute.

According to one account, there were at least 24 different NAFTA, WTO or Court of International Trade actions involving the most recent softwood lumber dispute, not including the prospect for two US constitutional cases as well. Unfortunately, a NAFTA dispute panel decision does not “trump” a WTO decision (nor vice versa), and the opportunity for extended appeal means that prompt decisions simply do not happen. Nor do

the decisions come with an enforcement mechanism.

The protracted differences are not a consequence of structural failures within the NAFTA provisions. Indeed, NAFTA and its side agreements came with a variety of specific, thoughtfully devised dispute settlement mechanisms, including five formal dispute settlement mechanisms. Nor have they been without success; for example, during its first decade of operation, a number of specific cases were resolved through consultations under “Chapter 20” (General Dispute Settlement) and 8 of 23 actions initiated under “Chapter 11” (Investment).

It has been the “Chapter 19” (Antidumping and Countervailing Duties) disputes that have been the most contentious.

To continue the “marriage maintenance” analogy, the existing dispute mechanisms are capable of managing the “who takes out the garbage” level of disagreement but not the “shall we sell the house, quit our jobs and move to Patagonia” issue. These arguments — of which softwood lumber is only the most recent — simply must be addressed at the political level where, after all of the resolvable elements of the dispute have been addressed by technical experts, the bag carriers are politely escorted from the conference room and the political decision-makers decide that which is to be decided, making the compromises that have potential political costs associated.

That is not to say that political decision-makers take any pleasure in the political risks involved in such decisions. Hence, they seek better bureaucratic mechanisms, to avoid the risks in political decisions. Such has been the approach devised from the October 2006 US-Canada softwood agreement. If differences cannot be resolved bilaterally, within set periods of time, they are to be addressed by the London Court of International Arbitration (otherwise known as the “London Court” operating under

“London rules” although there is no actual/physical court).

Canadians and Americans may be able to see how this alternative plays out as the US requested formal consultations on March 30, 2007, and with the failure of these consultations requested arbitration on August 7. Two technical points in the softwood agree-

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ment are in play: One concerns whether Canada failed to curb its exports sufficiently as required by the agreement’s “surge” mechanism, and the second deals with federal and provincial programs to aid the forestry industry.

The US and Canada each have 30 days to nominate an arbitrator (arbitrators will be neither Canadian nor US citizens, thus eliminating the occasional previous intimation that NAFTA panel members were biased in favour of their national positions). The two jointly choose a third, tribunal chair. After the arbitrators are selected, a judgment supposedly is to be rendered within six months, although a significantly longer period of time would not be surprising.

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The problems are deeper than running-scared US politicians in the pre-2008 campaign period. The losers from free trade are too visible and the winners too abstract to sustain the process in a period when, regardless of their economic

strength, societies believe themselves at risk and Amcits believe that free trade reduces job security.

We have explored compensation under the Trade Adjustment Assistance Program, which is designed to provide support, training, job search and relocation assistance for workers losing jobs due to imports. Combined with unemployment compensation, trade

readjustment allowances can last 78 weeks. While necessary, it is not sufficient. Such will have to be expanded and extended to contain labour anxieties over the (prospective) loss of jobs.

There are a variety of devices and structures that can compensate for job loss — not just from FTAs. We may need to investigate a formalized minimum annual wage. Or early social security retirement for individuals whose positions were eliminated by free trade agreements. Or extended supplementary support payments to cover the difference between the new McJob and the previous FTA eliminated position.

These will not be economic but rather political decisions. We will have to decide whether what Washington/Ottawa believe to be valuable societal, even global positions regarding free trade are sufficiently compelling to compensate extensively the significant numbers of “left behind” population. It won’t be cheap; it won’t be easy; however, it offers remarkable opportunity for new socio-economic creativity.

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