

guarantee against subsequent abrogation, or against piecemeal erosion of its benefits to Canada. It seems clear, however, that a treaty carries no greater assurances in these respects than an executive agreement. Both have the same force under the U.S. constitution in terms of overriding state legislation and previous federal legislation; furthermore, both may require the adoption by both Houses of Congress of implementing legislation²². The executive agreement has a further appeal from the Canadian perspective, since from the start this process requires the involvement of the House of Representatives, whereas the treaty process involves only the Senate. It would seem essential that an agreement as important to both countries as a Canada-U.S. trade agreement should carry the support and confidence of the House of Representatives. Moreover, a treaty on the U.S. side requires the "advice and consent" of a two-thirds majority in the Senate, whereas an executive agreement requires the approval of only a simple majority.

For all the above reasons, therefore, the outcome of future bilateral trade negotiations should be cast on the U.S. side, from the first, in the form of an executive agreement pursued under fast-track procedures.

Summing It Up

It is remarkable that there have been so few Canada-United States institutional arrangements concerned with trade and trade policy, considering the massive scale, the complexity and the closeness of bilateral relations in these areas.

Since the second world war the General Agreement on Tariffs and Trade (GATT) has served as the basic trade agreement between Canada and the United States (as well as the trade agreement of both countries with other GATT members), supplemented by a relatively few purely bilateral arrangements governing cross-border trade, including the important Automotive Agreement.

A new Canada-United States trade agreement would supplement the GATT, as it applies to cross-border trade, but would not replace the GATT.

A new bilateral trade agreement should be designed (a) to achieve a higher degree of cross-border trade liberalization than is likely to be achieved in the prospective round of multilateral GATT negotiations; (b) to establish new and improved rules governing cross-border trade beyond those likely to be agreed on a multilateral basis in the prospective GATT negotiations; and (c) to create new institutional arrangements both between the two governments and in the form of an independent Joint Trade Commission.

The agreement should provide for a Ministerial level committee consisting of the Canadian Minister of International Trade and the United States Trade Representative, to help ensure cooperation between the two governments in implementing the agreement, interpreting its provisions and improving it in the light of changing circumstances.