

Canadians should also be concerned about the durability and permanence of a new bilateral trade agreement, and the risk that benefits under it could be whittled away by subsequent, conflicting U.S. legislation and policies at the federal or state level. In this regard, the nature and form of the agreement will require special attention, as will the process by which it is approved and implemented on the U.S. side.

This study addresses the two institutional and legal issues referred to above:

- ° the nature, structure and functions of new institutional arrangements created under the agreement; and
- ° the nature and form of the bilateral agreement.

The institutional elements of a future bilateral trade agreement, and its nature and form cannot be discussed in isolation from the purpose and objectives of the agreement, and the substantive provisions it is likely to contain. Accordingly, it is useful to set the discussion in the historical and contemporary context within which a Canada-U.S. trade agreement would be concluded, and in the context of the broad purposes and design of a bilateral trade agreement.

#### **An Historical Perspective**

It is remarkable that historically there have been so few legal and institutional arrangements between Canada and the United States of a bilateral nature in trade areas, in view of the massive scale, the complexity, and the closeness of their relationship in these areas, and the importance of two-way trade for each country. The Reciprocity Treaty of the mid-19th century, which removed tariffs on cross-border trade in so-called "natural products" but not generally manufactured goods, was short-lived and contained no provisions for joint institutions of any kind. After its abrogation by the United States in 1866, prompted in part by a resurgence of protectionist pressures in that country, no formal trade arrangement between the two countries existed for a period of almost 70 years.

United States trade policy was dramatically changed in the mid-1930s, following the adoption of the 1934 Reciprocal Trade Agreements Act under the Roosevelt administration. By this legislation, Congress authorized the Administration to enter into agreements with other countries for the reciprocal reduction of barriers to their mutual trade, on a most-favoured-nation basis. Canada quickly responded with a proposal to negotiate a Canada-U.S. agreement which was concluded in 1935 and renewed and extended in 1938. These negotiations, especially those in 1938, achieved a substantial reduction of the high tariffs on both sides which limited cross-border trade. The 1935 agreement established for the first time that the most-favoured-nation rule would govern bilateral trade, while allowing for continued Canadian preferences on imports from Commonwealth sources, thus bringing the bilateral relationship into line with the relationships of the two countries with their other trading partners. In 1938, the Canada-U.S. negotiations which took place in Washington over a seven-month period were blended with simultaneous negotiations of the