Form of Bilateral Trade Agreement

The form of the agreement is important from a Canadian perspective for a number of reasons. A basic Canadian objective will be to ensure maximum security of an agreement against future unilateral abrogation by actions of the U.S. Congress or the President, or the piecemeal whittling away of benefits to Canada by subsequent U.S. legislation. A second objective will be to facilitate smooth and rapid approval by Congress of the agreement and any implementing legislation. A futher objective will be to minimize controversy in Congress and among the U.S. public which would inevitable fuel parallel uncertainty and controversy in Canada. Finally, the form of the agreement should be such that it will inspire confidence in the Canadian Parliament and the public, and also on the U.S. side, with respect to its durability and stability.

These objectives are best attained by casting the agreement, on the U.S. side, in the form of an "executive agreement" rather than a treaty, on condition that the executive agreement is pursued under so-called "fast-track" procedures, as provided for in the 1974 Trade Act and the 1984 Trade and Tariff Act.

Fast-Track Procedures

The fast-track procedures apply to executive agreements, rather than treaties, and were put into place following the Kennedy Round specifically to facilitate the ratification by Congress of trade agreements. These procedures were used effectively at the conclusion of the Tokyo Round to secure Congressional approval for the new GATT codes and the results of the Tokyo Round, and also to ensure the adoption of the necessary U.S. legislation to implement the agreements entered into by the U.S. negotiators during the Tokyo Round. The fast-track process was also used successfully in 1984 to approve and implement the bilateral trade agreement between the United States and Israel.

It seems clear that under existing U.S. legislation, the executive branch has authority to launch, negotiate and conclude a trade agreement with Canada, but only with the approval of Congress at various stages in the process. The 1974 Trade Act granted limited authority for the executive branch to negotiate and conclude agreements on a bilateral or multilateral basis covering non-tariff measures. The 1984 Trade and Tariff Act extended this authority to cover tariffs as well, but only under bilateral agreements concluded as a result of a request by another country. In both cases, this authority applies only to executive agreements negotiated and concluded under fast-track procedures.

There are two essential features of the fast-track process. One is that the executive branch must consult both Houses of Congress in advance of and during the negotiating stage. The second is the obligation of Congress to take rapid action to approve or disapprove the outcome of the negotiations once the agreement has been signed, and to adopt any necessary implementing legislation