

Novel Institutional Provisions

To help secure market access, the FTA has a number of new institutional arrangements. Where disputes over countervailing duties and anti-dumping are involved, cases will be subject to binding adjudication by binational panels. Decisions must now be rendered within 10 months.

Under the general dispute-settlement provision, either country can request consultations if it feels its interest has been harmed. If the resulting review does not produce satisfaction, then both sides can refer it to a binational panel. In the special case of emergency safeguard measures, differences will be settled by a binational panel with binding powers. Decisions on other cases can be binding if both parties agree.

The intent is to avoid disputes and settle differences by requiring and encouraging early and frequent consultation. Consultations include regular bilateral meetings of International Trade Minister John Crosbie and his American counterpart, U.S. Trade Representative Carla Hills. Rapid and non-political resolution of what otherwise might blossom into serious irritants should result.

Where either country amends its trade law, changes can only apply to the FTA partner if it is named. For Canada particularly, this means that there will be no more side-swiping by punitive measures intended for others. Disputes about new trade legislation in either country are to be sent to a binational panel which will rule on whether the changes conform to FTA principles.

What the Future Holds

The Canada-U.S. Free Trade Agreement is unique among international trade agreements in that almost every chapter contains provisions and an agenda for further negotiations either bilaterally or multilaterally through the GATT.

The most contentious negotiations will concern subsidies and trade remedies (anti-dumping and countervail). This was a very difficult issue during the FTA negotiations. The best both sides could do was agree to continue negotiations over the next five years, with a two-year extension if necessary, to attempt to introduce disciplines in the area of subsidies and trade remedies.

With major ports and transportation infrastructure on both the Pacific and Atlantic oceans, the opportunities in the major markets of the European Community and Asia-Pacific are key to Canadian business success.

In the areas of government procurement and intellectual property, the FTA did not accomplish what had been hoped, but both sides agreed to try again at the GATT negotiations. The U.S. was not prepared to limit its unilateral powers in regard to intellectual property. There may be some progress in Geneva where the stated goals are to clarify the GATT provisions, elaborate new rules and disciplines, and develop a multilateral framework of principles and rules to deal with international trade in counterfeit goods.



The FTA holds important ramifications for Canada's relations with the GATT. Previously, Canada spent much of its energies at GATT meetings negotiating market access issues with its largest trading partner, the U.S. Now, Canada has settled most of those questions with the U.S. on a bilateral basis and can turn its attention to negotiating matters with other significant trading partners such as the European Community, Japan and the newly industrialized countries of the Third World.

For the GATT in general, the Canada-U.S. FTA can be seen as a positive step. It breaks new ground in the services and investment areas, and it has achieved substantial gains in the agricultural sector. No doubt, the FTA and its results are being closely scrutinized by all GATT members. Many, in fact, believe that the historic agreement provides a model for future bilateral and multilateral trade arrangements, particularly in investment and services.

For International Trade Minister John Crosbie, the FTA gives business "clear rules it can rely on."

As a small, open economy, Canada loses a lot when trade protectionism breaks out. Thus, it is taking a lead in the GATT negotiations. In fact, the same Canadian Cabinet meeting in 1985 that approved a free trade initiative with the U.S. also approved the basic elements of Canada's position for the current GATT Uruguay Round. "This has been a two track process," says International Trade Minister John Crosbie. "Negotiating improved access to the United States is meant to give Canadian business a head start in taking on competition from around the globe."