CANADA-UNITED STATES FREE TRADE AGREEMENT: IMPLEMENTATION IN YEAR TWO

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HIGHLIGHTS

The FTA is working well and contributing to a more positive trading relationship with the United States. Its implementation in 1990 proceeded in a smooth and effective manner and no significant difficulties have been encountered.

- Regulations required to implement the FTA have been passed according to schedule and the tariff reductions that are required each year under the Agreement have been made.

- The accelerated tariff reductions on 400 items representing $6 billion in two-way trade became effective April 1, 1990. A new round of tariff acceleration consultations has been initiated and implementation is expected by July 1, 1991.

- The Working Group on Rules of Origin and Other Customs Matters has made progress on a number of proposed clarifications and revisions to the FTA rules of origin.

- The Agreement's provisions on temporary entry for business persons continued to be expanded and refined. Temporary entry has operated smoothly under the direction of the two immigration services.

- The Canada-United States Trade Commission met on May 18 and October 11, 1990 to oversee the Agreement's implementation and to take actions to resolve possible differences.

- Irritants in agricultural trade were reduced, in part through the operations of FTA working groups. An experimental open-border inspection system for meat and poultry trade was agreed to.

- The Co-Chairmen of the Auto Select Panel recommended that the FTA North American value-added requirement be raised from 50 to 60%, but Canada indicated that it would not consider increasing the content rule unless it clearly benefited Canadian industry and improved its competitiveness.

- A Services Working Group was established to identify opportunities for increased liberalization in trade in the service industries.

The dispute settlement mechanisms are working well and should be regarded as one of the major benefits of the FTA. Canadian interests, both industry and government, are making effective use of them.

- The FTA Chapter 18 dispute settlement panel on lobster found that the U.S. measure constituted an internal measure, not a restriction on imports as Canada had argued. Following efforts to seek a negotiated solution, Canada announced its decision not to enter into an agreement with the United States concerning trade in lobster.

- Chapter 19 dispute settlement panels examined the questions of injury and subsidy on pork exports. These panels remanded both the countervail and injury decisions back to the U.S. authorities, which subsequently reaffirmed their initial determinations. These cases had not been fully completed by year's end.

The FTA is working successfully to secure Canadian market access against U.S. protectionist measures. Some examples of how the FTA preserved Canadian market access in 1990 are the following:

- A bill to restrict the import of textiles and footwear specifically exempted Canada from the proposed trade restrictions because of the FTA. In the end, the bill was vetoed but the point is that the FTA had offered special protection to Canada.

- Legislation imposing new certification requirements for industrial fasteners (U.S Fastener Quality Act) was modified so that Canadian fasteners are treated in the same way as U.S. fasteners. This change was critical to Canadian steel producers' ability to continue to make "just in time" deliveries to auto manufacturers.

- Canada obtained an exemption from the U.S. prohibition against the transport of lottery tickets through the United States. This allows Canadian exporters to ship their products to Mexico and other Latin American countries by the most economical route.

- Canada was exempted from the restrictive provisions of a U.S. bill on the application of anti-trust law to foreign participation in joint ventures. Although the bill did not pass, it may be taken up by Congress again next year.

- The FTA was cited as a positive factor in the process leading to the approval of the Iroquois natural gas pipeline by the Federal Energy Regulatory Commission. The sponsors of the pipeline estimate the project will generate approximately $800 million annually for Canadian producers.

It will also generate 3,800 pipe-laying jobs and substantial orders for Canadian steel.

- By relying upon the FTA, Canada was able to maintain full national treatment for the pricing of gas exports to Northern California when the California Public Utilities Commission proposed the introduction of discriminatory requirements.

- The FTA was instrumental in persuading the U.S. Small Business Administration to allow Canadian-owned companies in the United States to maintain their eligibility for U.S. Government procurements under the Small Business Set-aside Program.

INTRODUCTION

The goals of the Canada-United States Free Trade Agreement (FTA) remain the same now as they were at the outset: to improve the trading relationship with the USA and to ensure more secure access to Canada's largest trading partner, accounting for over 75 percent of Canadian exports; and to stimulate Canadian competitiveness and industrial efficiency.

These goals can best be achieved through continued smooth implementation of the FTA, which calls for:

* the elimination of barriers to the bilateral trade in goods and services over a ten year phase-in period;

* the facilitation of fair competition within the free-trade area;

* the liberalization of conditions for investment;

* the establishment of effective procedures for the joint administration of the Agreement and the resolution of disputes; and

* the laying of a foundation to expand and enhance the benefits of the Agreement.

Since the FTA entered into forced on January 1, 1989, Canada and the USA have worked diligently to ensure its smooth implementation.

In 1990, a great deal was accomplished, as both parties used the FTA to full advantage. The result is that there now have been two years of solid progress. A year ago the Government described a very successful beginning for the multi-year process of maintaining and enhancing the world's largest bilateral trading relationship. This pattern has continued and even intensified through the second year of the FTA, as demonstrated in this report, which once again provides a comprehensive and detailed account of how the Agreement is being implemented.

Given the difficulty in providing an accurate and comprehensive assessment of the FTA's impact on the Canadian economy at this early stage, the report does not attempt such an analysis.

The Government hopes that the report which follows will help Canadians to understand more about the implementation of the FTA during its second year.

1.2 Chapters 3 and 4: Rules of Origin and Border Measures

The second round of annual tariff cuts was implemented January 1, 1990. Close to 80% of dutiable U.S. goods imported into Canada are benefiting from reduced tariff rates. Data on Canadian exports to the USA at reduced FTA tariff rates is not yet available from U.S. Customs. Canada Customs ensured compliance with the requirement that importers have certificates of origin in their possession when they claim the FTA tariff treatment and provided guidance to Canadian importers on Exporter's Certificates of Origin so importers could qualify for FTA benefits.

The agreement also provides for the accelerated elimination of tariffs if both countries agree. On April 1, 1990 tariffs were eliminated on an accelerated basis for more than 400 tariff items covering approximately $6 billion in bilateral trade. Only items that were supported by the Canadian industry concerned and that were in the national interest were included. Canadian exports that will benefit include methanol ($100 million in exports to the U.S. in 1989); photographic film ($93 million); aluminum products ($354 million); printed circuits ($303 million) and diesel locomotives ($425 million). In response to the further request by the business communities in both countries for accelerated elimination of tariffs, the two governments have initiated a second round of consultations. The two governments have received over 500 applications. The target date for implementation is July 1, 1991.

In response to Canadian representations, the USA agreed that the period of validity for blanket Exporter's Certificates of Origin should be extended from the previous maximum of six months to twelve, and that exporters may attach a list of multiple consignees to a single certificate. These measures helped to facilitate customs procedures for Canadian exporters.

The U.S. government enacted legislation to modify its merchandise processing fee (customs user fee) effective October 1, 1990. Minimum and maximum fees were established. All elements of the U.S. customs user fee are subject to the U.S. obligation under the FTA to phase out the fee by January 1, 1994. Effective January 1, 1991, the fee was reduced for Canada to 0.102% of the value of a shipment and the minimum and maximum for Canadian goods is $12.60 and $240 per shipment respectively. The current level of fees for other countries is 0.17% ad valorem and $21 minimum and $400 maximum.

Legislation was also enacted exempting Canada from the U.S. prohibition against the transport of lottery tickets through the USA. This allows Canadian exporters to ship their products to Mexico and other Latin American countries by the most economical route. A bill to restrict the import of textiles and footwear

specifically exempted Canada from the proposed trade restrictions because of the FTA. In the end, the bill was vetoed but the point is that the bill had offered special protection to Canada.

1.3 Chapter 6: Technical Standards

There is continuing commercial interest by Canadian business in encouraging the review of existing incompatible U.S. and Canadian standards to achieve greater harmonization as a means of improving access to the U.S. market.

The system for the exchange of federal standards provided for in the FTA is now fully operational. Arrangements for the exchange of information on sub-federal and private sector standards are being reviewed with the USA. Although the FTA involves specific obligations only in relation to federal standards, sub-federal and private sector standards and regulatory organizations have been encouraged to respond constructively when commercial problems arise as a result of differing U.S. and Canadian measures.

There has been increasing contact between Canadian organizations and their U.S. counterparts at the stage where standards are being developed. The same applies in the case of private sector standards. Some organizations, both federal and private, are considering mutual recognition or acceptance of the technical equivalence of their respective standards and certification arrangements.

During 1990, U.S. legislation imposing new certification requirements for industrial fasteners (U.S. Fastener Quality Act) was modified so that Canadian fasteners are treated in the same way as U.S. fasteners. This change was critical to Canadian steel producers' ability to continue to make "just in time" deliveries to auto manufacturers.

A private sector binational committee established by the two governments has developed a common performance standard for plywood which has been referred to the appropriate standards authorities for consideration and approval. This represents significant progress in resolving a longstanding bilateral trade irritant.

1.4 Chapter 7: Agriculture

Implementation of the provisions of this Chapter are helping to facilitate agricultural trade between Canada and the USA and to promote and secure Canadian access to a $3 billion market.

In May, 1990, Canada exercised its right under the FTA to impose a temporary duty on imports of fresh asparagus from the USA when prices fell below the average price for the previous five years.

U.S. Secretary of Agriculture Yeutter and Minister of Agriculture Mazankowski announced in February, 1990 an agreement that meat and poultry products inspected by either government would move freely between the two countries. The agreement, once implemented, will resolve a bilateral dispute involving U.S. Department of Agriculture border spot checks of Canadian meat and will save Canadian producers time, money and hassle in exporting to the USA.

Under Article 705, Canada will remove Canadian import licenses for U.S. wheat, oats, barley and their products if U.S. support levels for each grain are equal to or less than Canadian support levels. The USA does not require import licenses for these commodities. Based on calculations exchanged between Canada and the USA in 1990, Minister Crosbie announced in May that import permits will continue to be required for U.S. wheat, barley and their products because levels of government support for these grains remain higher in the U.S. than in Canada. Based on 1989 calculations, import licenses were removed for U.S. oats and oat products.

The Canadian Government objected to a proposal in the 1990 Farm Bill which would have had the effect of targeting the use of the Export Enhancement Program (EEP) to Canadian markets. This proposal was not passed.

The nine bilateral Technical Working Groups (TWG) established under Article 708 continue their task of working towards an open border policy with respect to trade in agricultural, food, beverage and certain related goods. Their objective is to prevent or eliminate technical regulations or government standards that would constitute arbitrary, unjustifiable or disguised barriers to bilateral trade.
The TWGs have all established comprehensive work plans and made progress in some areas. The following are examples of the work the groups have undertaken:

The Meat and Poultry Inspection TWG has focused on the implementation of the "open border" policy for product inspection, as well as on the review of the equivalency of respective meat inspection systems.

The Dairy, Fruit and Vegetable Inspection TWG has primarily been involved in an information exchange in such areas as training, licensing and arbitration, product standards, safety standards and plant registration requirements. Agreement has been reached on a mechanism for early notification and consultation prior to regulatory and program modifications.

The Animal Health TWG has reached agreement on testing and certification for several equine and bovine diseases. The USA has also agreed to remove import testing requirements for two swine diseases.

The Pesticide TWG exchanged information but has been principally waiting for the results of domestic reviews of pesticide policies in both Canada and the USA.

The Plant, Health, Seeds and Fertilizer TWG has made progress in developing a reciprocal, modified inspection and certification system for the two-way movement of large volumes of greenhouse plant materials and in developing an operational framework for trade in nursery plants from areas of the USA infested with Japanese beetles.

The Food, Beverage and Colour Additives and Unavoidable Contaminants TWG made important progress toward having parallel food additive submission processes in both countries. In Canada, an amendment to the Food and Drug Regulations is being considered by Health and Welfare Canada to provide public notification when a food additive submission is received by the Department. This would mirror current U.S. Food and Drug Administration (USFDA) practice. The USFDA has made a commitment to amend its regulations so as to interpret the Freedom of Information Act as preventing the release of scientific data and information provided by Canada in confidence. Resolving this should improve the availability to scientists in both countries of the same toxicological and efficacy evaluation data, and should assist officials in reaching consistent conclusions in similar time frames.

It has been suggested that a new harmonized and more stringent level be adopted for aflatoxin contamination in food, USFDA is also working toward an amended policy that would allow draft regulations to be shared with the Government of Canada.

The Packaging and Labelling TWG has been examining nutrition labelling, ingredient listing and claims, food composition standards and grade nomenclature. The group has also reviewed container size regulations. With respect to the enrichment of flour and pending resolution of procedural questions on implementation, the acceptance of the equivalence of existing Canadian and U.S. standards has been tentatively recommended by the regulating departments of both countries.

The Fish and Fishery Products Inspection TWG has focused its attention on equivalence for a range of standards, tolerances and inspection activity levels, inspection systems, quality factors, aquaculture and the control of fish disease transmission. Of particular interest are efforts to establish equivalent safety

and quality control systems in processing plants. This may result in preferred status entry for products meeting the established criteria. As well, joint training initiatives have been undertaken in Quality Management Programs and sensory evaluation workshops.

The five TWGs on Veterinary Drugs and Medicated Feeds have made significant progress in many areas:

1) The Drug Residues Working Group has harmonized tolerances for 38 drugs which were added to Table III of the Canadian Food and Drug Regulation on September 29, 1990. Discussions planned for March, 1991 will examine tolerances for 30 more drugs.

2) The Analytical Methods Working Group has agreed on a preliminary draft protocol for the validation of residue methods by three to five participating laboratories. Agreement has been reached on dispute resolution procedures.

3) The Feed Mill Inspections and Good Manufacturing Practices (GMP's) Working Group has harmonized U.S. and Canadian requirements for medicated feeds. The Canadian Feed Industry Association has been consulted and compliance standards were discussed with their representatives in January 1991. Memoranda of Understanding are being developed for the exchange of information between Health and Welfare, Agriculture Canada and the U.S. Food and Drug Administration.

4) The Animal Feeds Working Group has requested representation from the New Animal Drug Division of the U.S. Centre for Veterinary Medicine to complement their representatives from the Animal Feeds Division in order to harmonize divergent claims and indications for similar products sold in both countries.

5) The Veterinary Drug Labelling Working group has unfortunately reached an impasse due to major differences in the U.S. and Canadian labelling requirements.

Under the auspices of Article 709, Minister of Agriculture Mazankowski and U.S. Secretary of Agriculture Yeutter held a meeting on June 11, 1990 to discuss bilateral and multilateral agricultural trade issues.

1.5 Chapter 8: Alcoholic Beverages

The implementation of this chapter has continued in accordance with the schedules set out under Chapter 8 of the FTA, with the provinces reducing their differential markups on wine.

1.6 Chapter 9: Energy

Free trade was a reality for large parts of Canadian energy trade before the existence of the Free Trade Agreement. The FTA formalized a situation which had been created since 1984 by a series of policy and regulatory changes. The most notable effect of the FTA on the energy sector is enhanced investor confidence. The FTA has assured investors, on both sides of the border, of the continuation of trade-supportive energy policies, thereby creating a more stable trading and investment environment.

Two specific instances reflect the significance of the FTA in facilitating cross border energy trade. By referring to the FTA, Canada was able to maintain full national treatment for the pricing of gas exports to Northern California when the California Public Utilities Commission proposed the introduction of discriminatory requirements. The FTA was cited as a positive factor in the process leading to the approval of the Iroquois natural gas pipeline by the U.S. Federal Regulatory Commission. The sponsors of the pipeline estimate that the project will generate approximately $800 million annually for Canadian producers. It will also generate 3,800 pipeline laying jobs and substantial orders for Canadian steel.

1.7 Chapter 10: Trade in Automotive Products

The FTA did not affect the free and secure access to the U.S. market provided by the Auto Pact.

The Select Auto Panel, established under Article 1004 with a mandate to propose public policy and private-sector initiatives to improve the competitiveness of the North American automobile industry, continued its work on customs procedures, standards, regulations and statistics. On August 3, 1990, the panel co-chairmen, Mr. Darcy McKeough of Canada and Mr. Peter Peterson of the USA, recommended that the North American value-added (NAVA) requirement be raised from 50% to 60%. This recommendation did not reflect the fact that a considerable number of Canadian members were concerned that the impact of the change could result in a significant proportion of the adjustment costs falling on Canada. As a result, Canada indicated that increasing the NAVA content rule would not be considered unless it clearly benefited the Canadian industry and improved its competitiveness and only after the Panel's views on global competitiveness had been received. The Panel's report on global competitiveness is likely to be presented during the course of 1991.

Canada provided the USA with the final list of manufacturers in Canada which qualify for duty waivers under the Auto Pact and other duty remission programs pursuant to Annex 1002.1 of Chapter 10.

1.8 Chapter 13: Government Procurement

Canadian companies are increasingly aware of opportunities that exist in the U.S. government market and are better positioning themselves to compete. In April 1989, the Canadian Government Business Opportunities (GBO) became the official publication for all notices of proposed procurements of the Canadian Government covered by the General Agreement on Tariffs and Trade (GATT) and the FTA. Issued on a daily basis since April, 1990, the GBO now lists a number of U.S. government procurement opportunities under GATT and the FTA that are open to Canadian suppliers.

Supply and Services Canada introduced the use of electronic bulletin boards for advertising procurement notices on a pilot basis in late 1989. This system named the Procurement Opportunities Board (POB) is now fully operational and includes notices for procurements under the GATT and the FTA.

As a result of the FTA, the Procurement Review Board came into existence on January 1, 1989. A similar mechanism is already available to Canadian companies in the USA through the General Accounting Office and the General Services Administration Board of Contract Appeals. From January, 1989 to November, 1990 the Canadian Board has handled twenty-eight complaints of which eight have resulted in full investigation and determination, with seven cases decided in favour of the complainant.

The FTA was instrumental in persuading the U.S. Small Business Administration to allow Canadian-owned companies operating in the United States to maintain their eligibility for U.S. Government procurements under the Small Business Set-Aside Program.

The exchange of procurement statistics, provided for in Article 1306, is due to take place in 1991.

1.9 Chapter 14: Services

The FTA provides a framework for liberalizing trade in specific services through a national treatment approach and promises to improve the environment for services trade between Canada and the USA. While most commercial services are covered, the exceptions from FTA coverage are transportation, basic telecommunications (such as telephone service), medical services, lawyers, child care, and government-provided health, education and social services.

A Services Working Group was established on November 30, 1989, to identify opportunities for increased liberalization in trade in the service industries. The Group met in May, 1990 and developed a consensus on a work plan to ensure the effective implementation of the Chapter.

The Tourism Working Group, also established under Chapter 14, held its second meeting on October 1, 1990, in Ottawa. It continued a work program focusing on exchange of information of policy initiatives, joint research, some coordination of approach towards international tourism organizations and joint initiatives to facilitate tourism between the two countries.

1.10 Chapter 15: Temporary Entry

Progress has continued to be good on the implementation of Chapter 15 of the Agreement which seeks to ensure that covered business persons have facilitated access to each other's market.

A number of measures were recommended by the Canada-U.S. Trade Commission on November 30, 1989 to facilitate temporary travel of business persons between the two countries and the following are expected to come into force shortly. Schedule 1 is being amended to make it clearer that a sales representative or agent must be in the employ of an employer or firm in the country of citizenship and be travelling to the other country to sell goods for that employer or firm. Schedule 2 is being amended both to expand the number of professions covered by the temporary entry provisions (upon the recommendation of either Party or at the request of professionals and their representative associations) and to incorporate the minimum standards for qualification for border entry in each of the listed professions. This will enable reciprocal treatment by port of entry officials in both countries. The profession of journalist was deleted from Schedule 2.

A series of new proposals were approved at the Commission meeting on October 11, 1990 which will now be subject to public comment. It is proposed that Schedule 2 be amended to establish minimum educational requirements/alternative credentials for the following professions which are already included in Schedule 2 but for which credentials had not been previously established: Accountant, Animal Breeder, Computer Systems Analyst, Clinical Lab Technologist and Medical Technologist. The job titles for Clinical Lab Technologist and Medical Technologist are to be amended and the minimum educational requirements/alternative credentials for Hotel Manager are to be revised. The credentials for temporary entry as a Scientific Technician/Technologist are to be modified to clarify and expand upon the activities these individuals may perform and to add "engineering" to the list of included disciplines. It is also proposed that the following new professions (and educational requirements/alternative credentials) be added: Geochemist, Industrial Designer and Interior Designer. These proposed amendments will go through the normal regulatory process of publication in the Canada Gazette and a review after public comments are received.

1.11 Chapter 16: Investment

The Free Trade Agreement applied the principle of national treatment in the case of cross-border investment activities. Some barriers that predated the FTA remain but there are to be no additional restrictions imposed.

This provision has been particularly important in defending Canadian interests over the past year in the face of concerns in the USA about the extent and implications of foreign investment which have given rise to a number of protectionist measures. In opposing protectionist proposals, and in particular their application to Canadian investors, Canada has been able to point to the FTA national treatment obligation. As a result, Canada was exempted from the restrictive provisions of a U.S. bill on the application of anti-trust law to foreign participation in joint production ventures. Although the bill did not pass, it may be taken up by Congress again in 1991.

Canada has retained the right to review significant U.S. investments. In 1990, the threshold for review of a direct acquisition was increased to $50 million, and that for an indirect acquisition to $250 million. During the first three quarters of 1990, Investment Canada received 50 notifications from investors for acquisitions which fell between the old (pre-FTA) and new thresholds. The total asset value of these acquisitions was $761.1 million. Of the 50 notifications, 48 were direct acquisitions and 2 were indirect acquisitions. The two indirect acquisitions accounted for $133.4 million of the total asset value of $761.1 million.

Canada will continue to adjust its investment review policy in accordance with Article 1607. In 1991, the Investment Canada review threshold is $100 million for direct acquisitions of Canadian companies by American investors. The threshold for reviewing U.S. direct acquisitions will peak on January 1, 1992 at $150 million. For indirect acquisitions by U.S. investors, the threshold figure as of January 1, 1991 is $500 million. From January 1, 1992, there will no longer be any review of indirect acquisitions.

1.12 Chapter 17: Financial Services

In accordance with Chapter 17, Canada has essentially exempted U.S. financial institutions from Canadian foreign ownership regulations. The USA passed legislation to meet its commitments under this chapter. Consultations have continued between Finance and Treasury officials to further liberalize rules governing financial services trade, as provided for in Article 1704.

1.13 Chapters 18 and 19: Dispute Settlement and Institutional Provisions

The unique dispute settlement mechanisms, established under Chapters 18 and 19 of the FTA, continued to be used to resolve trade disputes. Chapter 18 applies to all bilateral trade issues arising under the FTA except for the review of anti-dumping and countervailing duty cases (AD/CVD), which are dealt with under Chapter 19. Disputes over financial services are dealt with in Chapter 17 and Investment Canada decisions are not subject to the dispute settlement mechanism of the FTA.

A. Chapter 18:

Since the coming into force of the FTA, bilateral consultations under Article 1804 have been held on: cable retransmission rights (request by both parties), fresh fruit and vegetable labelling (U.S. request), plywood (Canadian request), wines and spirits (U.S. request), wool (Canadian request) and lobster (Canadian request).

Two disputes have been carried through to panels for advisory decisions. The first, in 1989, involved a dispute over Canadian landing requirements for West Coast salmon and roe herring. The panel concluded that a landing requirement is a legitimate conservation measure, but suggested that the direct export of ten to twenty per cent of the catch from the grounds would not defeat this purpose. Canada subsequently announced it would adopt the panel report and accordingly developed a plan of implementation in consultation with the USA and the B.C. government and industry.

In the 1990 dispute on the application of the U.S. minimum size restrictions to Canadian lobster imports, the Panel ruled that the U.S. federal measure was an "internal" measure, not a restriction on importation as Canada had argued.

B. Chapter 19:

Fourteen panels have been requested to date. All but one were initiated by Canadian exporters contesting U.S. countervail and anti-dumping findings. Canadian challenges have been undertaken for steel rails, red raspberries, paving parts, salted codfish and pork. The U.S. initiated complaint involved dumping duties imposed by Canada on electrical induction motors imported from the USA.

The panel process has been completed in all but five of the panel requests. The first decision of a Chapter 19 panel was issued December 15, 1989 with a unanimous finding that the U.S. Department of Commerce's margin of dumping findings were defective against two of three B.C. raspberry exporters and were

not supported by the evidence on record. As a result, the U.S. Department of Commerce decided to drop the anti-dumping duties for the two Canadian companies and to refund those duties already paid. In the steel rail cases, brought by Sydney Steel Company and Algoma Steel, the U.S. determinations were ultimately confirmed, as was the case in the three panels on paving equipment. With respect to salted codfish, the U.S. anti-dumping order has been rescinded and panel proceedings were terminated December 15, 1989.

There was considerable activity in 1990 on the two panels on pork brought by the Canadian Pork and Meat Councils to review the U.S. International Trade Administration (ITA) decision on subsidy and the U.S. International Trade Commission (ITC) decision that imports of Canadian pork were threatening to injure the U.S. pork producers. The Canadian Government is a party to the action on subsidy. The Panel reviewing threat of injury in a unanimous decision remanded the issue to the ITC for determination because of the ITC's reliance on questionable statistics. On October 23, 1990, the U.S. ITC upheld its initial threat of injury finding bringing forward some new information on Canadian consumption and production of pork. The Panel on subsidy also decided on a remand to the Department of Commerce, in part based on the use of "automatic pass through" methodology which Canada had successfully challenged in the GATT. A decision on December 7, 1990 by the Department of Commerce reduced the subsidy finding from 8 cents per kilogram to 6.6 cents. These U.S. remand determinations are being reviewed by the respective panels whose decisions will be forthcoming in early 1991.

With respect to the U.S. initiated case, two U.S. companies have requested a Panel review of the October 20, 1990 decision by the Canadian International Trade Tribunal to continue to impose dumping duties on electrical induction motors imported from the USA. The FTA Panel decision is due by September 11, 1991.

The operation of the Chapter 19 dispute settlement mechanism, unique in international trade law because of its power to issue legally-binding decisions with respect to the review of the activities of domestic agencies, has had a positive effect on the Canada-U.S. trade environment. While the panels are circumscribed as to the grounds on which they can decide a case (essentially the fair and reasonable application of domestic laws based on the record), the mechanism has provided for objective and more timely review of decisions that can impact negatively on individual exporters as well as the broader trade relationship.

C. Canada - United States Trade Commission

The FTA established the Canada-United States Trade Commission which has overall responsibility for the administration of the Agreement. The Commission is headed by the Cabinet-level

officials having responsibility for international trade: the Minister for International Trade in Canada, The Honourable John C. Crosbie, and the United States Trade Representative, Ambassador Carla Hills. After holding two meetings in 1989, the Commission held a further two meetings in 1990, on May 18 in Toronto and October 11 in St. John's. At each meeting, the two ministers reviewed a very complete agenda affecting all aspects of the FTA and cited the progress being made in the implementation of the FTA.

D. Chapter 19 Working Group (Subsidies and Trade Remedies)

FTA Articles 1906 and 1907 provide for a five to seven year period for Canada and the USA to develop more effective rules and disciplines concerning the use of government subsidies in both countries, and a substitute system of rules for anti-dumping and countervailing duties as applied to bilateral trade. To this end and pursuant to Article 1907, the two parties established a Working Group, which has met three times: in Ottawa on May 4, 1989; in Washington on November 15, 1989; and in Ottawa on May 8, 1990.

Canada's preparations for the bilateral negotiations have included wide-scale consultations with the Canadian private sector and with provincial authorities, in order that the full scope of Canada's interests may be taken into account.

The Working Group's activities have so far been preparatory in nature. Substantive negotiations are scheduled to begin early in the spring once the status of the Uruguay Round of multilateral trade negotiations is known.

1.14 Chapter 20: Other Provisions

Pursuant to reciprocal obligations under Article 2006, effective January 1, 1990, Canada implemented in the Copyright Act a right of payment for copyright owners of broadcast programs retransmitted by cable companies. The scheme, which applies to distant Canadian and U.S. broadcast signals carried by cable operators, was instituted by the Copyright Board following hearings that lasted into the spring of 1990. The Board issued its decision on October 2, 1990 providing for royalty levels of approximately $50 million in 1990 and 1991, approximately 80% of which will accrue to U.S. copyright holders. There were five appeals concerning the decision which were rejected by Cabinet. Others may be filed in Federal Court.