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SELLING THE ENVIRONMENT SHORT:

[an environmental assessment of the first two years of free trade between Canada and the United States]

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Two years have now passed since the Free Trade Agreement was implemented and the environmental consequences of Deal are becoming apparent. This report offers an assessment of those consequences.

Introduction

On January 1, 1989, Canada and the US implemented a free trade agreement which, in the words of the President Reagan, represented an "economic constitution for North America". Ignoring commitments to integrated economic and environmental decision making, and notwithstanding its obvious and far-reaching implications, both governments entirely ignored the environmental implications of the new trade regime.

In fact Canada's Minister of the environment actually boasted that the issue of the environment never once came up during the negotiation of the trade deal. Apparently he hadn't read the Agreement because he need have gone no further than the index to learn that the trade deal was explicitly about energy, agricultural policies, forest management practices, food safety and even pesticide regulation, ie. matters that could not more directly affect the environment.

While the FTA assumed little prominence as a public issue in the US it became the subject of the most concerted public policy debate in recent Canadian history. One important aspect of that debate focused on the potential environmental consequences of the free trade regime. When confronted with the obvious contradictions between its commitments to integrating economic-environmental policy and planning on the one hand, and its indifference to the apparent environmental consequences of FTA negotiations on the other, the Canadian government dug in its heals and adamantly insisted that the trade deal would have no significant environmental effects.

This is how the Canadian government responded to a question about the trade deal's environmental impact :

> *"The free trade agreement is a commercial accord between the world's two largest trading partners. It is not an environmental agreement. The environment was not, therefore, a subject for negotiations nor are environmental matters included in the text of the agreement."*[1]

Because the government of Canada was steadfast in refusing to conduct an environmental analysis of the free-trade agreement a number of Canadian environmental groups decided to conduct their own[2]. In August 1988 the conclusions of that analysis were published in a report titled "*Selling Canada's Environment Short*" that was endorsed by over 90 Canadian environmental organizations from every region of Canada.

The groups' analysis of the FTA concluded that the trade deal would be likely to have profound and disastrous implications for the environment, and fundamentally undermine the principles of environmental protection and sustainable resource management. Because the deal would enshrine principles of deregulation, while encouraging the wholesale exploitation of natural resources, the report concluded that few if any environmental issues were likely to be untouched by the agreement. Its effects would be varied, wide-ranging and overwhelmingly adverse.

To date the impacts of the FTA have been most keenly felt in Canada. This is because of the dynamics of Canada-US economic and trade relationships. Canada's economy is predominantly resource based and it is dependent upon international trade for approximately 40% of its GDP. For these reasons the following analysis begins with an assessment of the environmental impacts of the FTA on Canadian natural resources.

PROMOTING ENERGY DEVELOPMENT AND USE

North Americans represent approximately 6 per cent of the worlds population. We consume more than 25% of its energy resources and our extravagant appetite for energy is notorious throughout the world. Given the overwhelmingly clear imperatives of global warming, our present energy policies are at best reckless and at worst, suicidal.

Moreover, Canada and the U.S. are becoming increasingly isolated in their recalcitrance to recognize the need for CO_2 emission reductions. While both countries stall efforts to establish international agreements to reduce greenhouse gas emissions, each pursues domestic energy policies that are intended to actually increase the use of fossil fuels. The FTA is now one of the principle instruments of those policies.

Here is what our respective governments have had to say about the Deal:

> *"our biggest (energy) problem is not shortage but abundance"*
>
> [Conservative Government briefing notes suggesting an answer to concerns about future Canadian energy security]

> *"true energy security lies in the vigorous development of our resources for both domestic use and export",*
>
> [Marcel Masse, Canada's Minister of Energy Mines and Resources, at an energy conference sponsored by the American Stock Exchange as reported by the Globe and Mail: "MASSE SAYS MEGA-PROJECTS WILL DOMINATE FUTURE OF CANADIAN ENERGY PRODUCTION", November, 6,1987]

> *The Canada-US Free Trade Agreement met an essential priority of US trade policy, "secure supplies of energy at stable and reasonable prices" by proscribing future "government interference" in energy trade*[3].
>
> [US Trade Representative, Clayton Yeutter]

An entire chapter of the FTA is devoted to deregulating North American energy development and trade. Under the terms of the FTA both countries forego the use of regulatory devices that could be used to control the development of energy resources for export markets[4]. In addition, subsidies for oil and gas exploration and development are given special status under the agreement and insulated from attack under the trade protection laws of either country[5]. Subsidies and other programs intended to encourage energy efficiency and conservation measures, are accorded no such protection.

The first and already observable effect of the deal has been to prompt a new round of energy mega-projects intended to serve US markets. For example, since the trade was

implemented export licenses have been granted for two of the largest energy projects in Canadian history. Both would be established in Canada's north and each will have far reaching and profound effects upon indigenous peoples and the northern environment. Given the scale of the projects of the enormity of the environmental impacts associated with them, it is unlikely that either would be proceeded with were they to located within the United States.

Natural Gas From the Arctic

One of these projects will involve extensive natural gas development in the Mackenzie Delta on the shore of Beaufort sea in the Canadian arctic. This $10 billion project which will involve the construction of 1200 mile long pipeline, one of the longest in the world, across arctic permafrost will have significant and adverse environmental effects for unique and fragile northern ecosystems. Production facilities would be spread over a large of area of the MacKenzie Delta, which is a major fish spawning, rearing and over-wintering area, as well as a migratory corridor[6]. The project which will be the biggest ever undertaken in the Canadian arctic, is being promoted by Canadian subsidiaries of Esso, Gulf and Shell - companies that vigorously promoted the FTA.

The export licenses for this natural gas that have been approved by the National Energy Board (NEB) will allow the companies to export approximately 87% of the natural gas reserves of the Mackenzie Delta. Moreover the licenses are for a 20 year period that may continue through the year 2020. While energy corporations argue that too little is know about global warming to warrant commitments to CO_2 reduction[7], they have no difficulty in seeking government approvals that will mean substantial increases in energy resource development and use. The companies also concede that the only rationale for Arctic gas development at this time is to serve export markets in the US[8].

It is impossible to reconcile a proposal that seeks to export approximately 87% of Mackenzie Delta gas reserves over a 20 year period, with any notion of resource conservation. Moreover there is evidence that Canada is already overproducing natural gas in a manner inconsistent with the imperatives of sustainable development. Canada is estimated to have about 2.5% of the Worlds natural gas reserves yet in 1987 it was third in terms of world output. As described by the Standing Senate Committee on Energy and Natural Resources in 1988,

> *"this indicates that Canada is overproducing its natural gas reserves relative to other major gas producing nations (with the notable exception of the United States, which held 4.9% of world proved reserves at year-end 1987 but produced 25.1% of world's gas [in that] year."*[9]

The responsibility to consider such export license applications rests in Canada with NEB. The regulatory authority of this agency was all but eradicated by the FTA[10]. On the only occasion that the NEB declined to approve natural gas export licenses, the US companies seeking those licenses quickly appealed to the Canadian Federal Court challenging the right of the NEB to say no[11]. The companies argued that Canada had no right under the FTA to prevent energy exports simply because the costs to Canada were greater than the benefits the country would derive.

In the face of this challenge, and confronted with concerted pressure from the US companies, the NEB simply backed down and agreed to effectively jettison its role for determining whether energy export license applications were in Canada's interest. Instead the Board would only examine proposed export contracts to determine whether they have "commercial substance" and:

> " *... would generally presume that where contracts are freely negotiated at arm's length, they are in the public as well as the private interest and that the Board would intervene only in exceptional circumstances.*"[12]

The effect of this astonishing abdication of responsibility to manage energy resources in the public interest simply gives over entirely to the "market" pre-emptive rights to determine the course of resource development in both countries. Through the FTA, market forces have become the ultimate, and only, arbiter of the public interest.

Electric Power From James Bay

The other energy mega-project that should be seen as a direct consequence of the economic and resource policies the FTA entrenches, is the James Bay hydro electric development in Northern Quebec. The litany of extreme and adverse environmental impacts that will occur if the this $50 billion development proceeds has been thoroughly documented by native Cree communities living in the area, by the Audobon Society and others.

Described by its proponents as the "Project of the Century", the James Bay II development will, when completed, produce a staggering 26,000 megawatts of power. It will involve massive engineering works that will reshape a territory the size of France, and will represent one of the largest engineering projects ever undertaken[13].

As is true for Mackenzie Delta gas reserves, the James Bay II project is being developed to serve export markets in the United States. Its proponent is the Province of Quebec, the only Canadian province to come out strongly in favour of the FTA.

In fact, so determined is the province of Quebec to proceed with the mega-project, whatever its consequences for the environment or indigenous people, that it has passed legislation to weaken the environmental assessment and public hearing requirements that would apply to the project[14]. When the NEB had the temerity to approve the export licenses subject to the condition that an environmental screening of the project be conducted before construction commenced, Quebec quickly filed a court application challenging the NEBs authority to do so[15].

Fuel to the Fire

The impacts of these energy mega-projects in Canada will be profound and are apparent. Less obvious, but no less significant, are their impacts in the US:

> Guaranteed access to Canada's energy resources will prolong the inefficient use of non-renewable resources by forestalling the impacts of declining US energy reserves.
>
> By assuring that the environmental impacts associated with large scale energy developments occur in Canada rather than in the US, one of the most important impetus for conservationist policies in the US is held at bay.
>
> Flooding the US market with cheap natural gas and electricity will displace conservation and efficiency investments that might have otherwise become cost effective.

While the impacts of the FTA will in many ways be felt differently in Canada and US, it is important to underscore the global implications of enshrining wasteful and destructive North American energy policies. By limiting the right of governments to regulate the development of natural resources, or to control that development to accomplish environmental objectives, the trade deal has undermined critical opportunities to accomplish goals that are necessary to confront ecological crises so severe as to put at risk the very prospects of human society.

MINING THE FORESTS

Since the implementation of the Canada US FTA their has been a virtual explosion of proposals to establish large scale logging and pulp operations in Canada. Virtually all of the proponents of these projects are transnational corporations based in the US or abroad. The implications of these projects for the prospects of sustainable forest management practices in Canada are disastrous.

The degree to which the FTA has influenced this enormous interest in exploiting Canadian forests is difficult to ascertain. It is not unreasonable to suspect however that the FTA is playing an important role because Chapter 4 effectively precludes Canada from controlling the rate at which logs or pulp leave Canada for the US.

Paper Recycling Laws

In one important respect however the FTA has already emerged as a potential mechanism to defeat resource conservation initiatives, in the form of recycling laws, that favour the use of recovered materials over virgin resources. This is true because the Canadian pulp and paper industry has urged Canada to challenge US recycling laws that require the use of recycled fibre in newsprint. As put by the Conference Board of Canada, a Canadian business think tank:

> *"From the viewpoint of the Canadian pulp and paper industry, it [referring to US recycling legislation] is viewed as a .... disguised non-tariff barrier to trade because Canada does not have the supply needed of recycled fibre to maintain market share in the United States."*[16]

The same sentiments have been expressed by the Canada's largest pulp and paper company in correspondence urging Canada to dispute newspaper recycling laws as a ploy of US newsprint producers seeking to gain competitive advantage[17]. Similar concerns have been expressed about the future of Canadian metal exports if the US adopts metal recycling laws[18].

As we move from an era that promoted the throughput of natural resources, to one that encourages more sustainable economic and resource management practices, such as reuse and recycling, we will confront the vested interests, and enormous influence, of very large corporations that exploit natural resources. It is entirely likely that the FTA will become the principle instrument to perpetuate the status quo and frustrate progress towards more sustainable resource policies.

OPEN SEASON FOR FISHERIES

As is the case for many countries, both Canada and the United States have fundamentally depleted fish stocks to such an extent as to threaten the long term sustaining capacity of these vital resources. One of the consequences of this mismanagement has been a crisis for Canada's fishing industries and the government is now scrambling to establish fish conservation programs that will allow these aquatic resources to be re-established and properly managed.

The first trade dispute to be adjudicated under the FTA involved a challenge, by the US, to Regulations under Canada's Fisheries Act established to promote conservation of herring and salmon stocks in Canada's Pacific coast waters[19]. This particular conservation program required that all fish commercially caught in Canadian waters be landed in Canada for biological sampling, to deter false reporting and for in-season management. After reporting in this manner, US commercial fisherman were free to export to the US.

In the first decision to be released under the FTA, the Canadian regulations were deemed to be "incompatible with the requirements of Article 407 of the FTA." In deciding the case, the FTA dispute panel concluded that where a conservation measure had a trade-restricting effect it could be sustained only if it could be said to be "primarily aimed at conservation". Considering the Fisheries Act regulation the panel stated:

> *"an important reason for the specific rule requiring all salmon and herring to be landed in Canada was to make exports more amenable to data collection and this, in fact, is its principle effect."*[20]

Notwithstanding this finding however, the panel went on to hold that it is also incumbent upon the country seeking to justify a conservation program that may have trade restricting effects to establish that the program *"was established for conservation reasons alone and that no other means were available to accomplish those objectives"*[21]. Few conservation programs could satisfy these onerous criteria, and not surprisingly Canada's fish management programs failed the test.

As explained by Robert Morley, the executive director of the Fisheries Council of British Columbia:

> *"what the panel decision actually does is strike down a legitimate resource conservation scheme and recommend substitution of an expensive, loophole-laden, unmanageable dual reporting system."*[22]

The salmon and herring case illustrates that in a contest between environmental and trade objectives, the former is not likely to come out the winner even when the effects on trade are tangential or secondary. Furthermore, because Article 407 applies to all natural resources, the implications of this important precedent for other conservation programs are disturbing.

The bias in favour of trade over environmental policy objectives, that is apparent in the "Salmon and Herring" case, is hardly surprising given the character and purpose of the dispute resolution processes established by the FTA. Simply stated, the purpose of these processes is to ensure the objectives of the FTA ie. the free flow of goods and commodities between the US and Canada. Moreover none of the institutions or agencies associated with this trade regime has a mandate, experience or interest in promoting environment objectives. When account is taken of the fact that FTA dispute resolution processes are singularly undemocratic, the prospects of the environment being recognized as an important priority seem remote at best.

FARMLAND AS AN EXPENDABLE RESOURCE

While most of us are aware of the successive economic crises to confront our farming communities, few are aware of the enormous ecological problems associated with current agricultural policies and practices. The tools with which we have transformed the farming industry - heavy machinery, mono-cultures, hybrid crop strains and chemicals - have precipitated a number of adverse consequences for soil fertility, water quality, public health and a viable rural economy. In the last 40 years we have lost much of the sub-soil structure of our most valuable farmland and have seriously threatened its sustaining potential as a "renewable" resource.

If an ecological recovery of agricultural lands is to be brought about two basic objectives must be accomplished. First, the economic viability of farm communities must be assured. There is no better paradigm for the notion of one generation holding resources in trust for the next, than the family farm. Secondly, agricultural policies and practices have to be re-oriented in favour of sustainable management approaches that must include much greater commitments to recycling organic wastes, using renewable sources of energy, applying ecologically derived cropping patterns and integrative pest control programs.

The Canada-U.S. FTA has undermined both objectives by adding to the economic pressures on agricultural industries to increase production at the expense of long term sustainability. By leaving farmers entirely at the mercy of market forces, the FTA has aggravated a serious economic farm crisis and will perpetuate the dynamics that are laying waste to our farmland.

Ice Cream and Yoghurt

One of the ways that the FTA is destroying Canada's farm economy, is by undermining the supply management systems upon which important agricultural sectors depend. Supply management allows a country to balance internal supply with demand thereby creating relatively stable markets and farm economies. By ameliorating the boom and bust cycles that characterize unregulated agricultural commodity markets, supply management can also play an important role in eliminating export dumping of surplus farm products. For supply management systems to work, a country must obviously have the ability to control imports of those agricultural commodities that it regulates.

While the Canadian government has attempted to conceal the fact from Canadian farmers, the FTA will mean the elimination of marketing boards and with them, Canada's ability to manage the supply of commodities in important agricultural sectors, including the dairy industry. This is so because the FTA requires the elimination of tariffs on

agricultural commodities. While quantitative restrictions for processed agricultural commodities are ostensibly permitted under the FTA, they are not allowed under GATT.

This fact was made clear when Canadian import restrictions for ice cream and yogurt were successfully challenged by the United States under GATT[23]. The ability to assure markets for Canadian dairy products is essential for the viability of marketing boards. For this reason the ice cream and yoghurt decision fundamentally undermines the viability of Canadian supply management systems. While the instrument of the attack on Canadian supply management programs for dairy products was in this case a challenge under GATT, it is important to recognize that the challenge would have never arisen but for the obligation imposed by the FTA to abandon the tariffs Canada had traditionally used to protect these commodities.

Global Food Trade and Global Warming

The attack on supply management is but one element of the larger agenda of de-regulating trade that is being promoted by certain food exporting nations and transnational corporations involved in agricultural commodity trade. The free trade agenda promotes a vision of a world in which the food production is highly specialized and food trade carried on globally. The implications of this scenario for the food security of nations and other non commercial objectives are distinctly adverse.

The globalization of food trade requires that agricultural commodities be transported long distances and be processed and packaged to survive the journey. In addition to sacrificing quality for durability, this system of agricultural trade requires enormous inputs of energy. In fact three times as much energy is used in processing, packaging and transporting food as is used to produce it. In the United States agriculture has historically used more energy and more petroleum than any other industry.

There is now widespread agreement among the international scientific community that very substantial reductions in energy use are necessary to avert the most pressing ecological crisis to ever confront our civilization. It is clear that any system of agricultural production and trade that relies upon massive energy inputs can not be continued. This is quite apart from the absolute folly of tying the long term productivity of what should be renewable resource, farmland, to an non-renewable resource, fossil fuels.

There are several ways in which modern agricultural practice effects global warming. However, the energy implications of globalizing food trade has not commonly been recognized as an important inter-relationship. It is quite clear however that by encouraging global trade in agricultural commodities, free trade will actually increase the energy demands of agricultural production. Thus as Canada and the US debate the merits of CO_2 reductions, they pursue agricultural trade policies that fundamentally undermine our ability to achieve that objective.

CLAMPING A LID ON ENVIRONMENTAL REGULATION

Environmentalists predicted that the FTA would undermine efforts to establish more effective environmental regulations and programs. Two years after implementation it is clear that the FTA has become a new and significant impediment to progressive environmental regulation in several ways.

Environmental Regulations as "Unfair Trade Practices"

By characterizing national environmental laws as non-tariff barriers to trade, opponents of environmental and workplace health and safety regulation have created an potent new weapon with which to assail these important initiatives. It didn't take long for US and Canadian business interests to persuade their governments to use the FTA to assail environmental programs in both countries.

US EPA Asbestos Regulations

Putting the lie to their assertions that nothing in the FTA would interfere with environmental initiatives, the Canadian government has recently relied upon the FTA to challenge US Environmental Protection Agency asbestos regulations.

In July 1989, the EPA announced that it was introducing regulations to phase out the production, import and use of asbestos over seven years. The ban represented the culmination of over ten years of struggle that had involved, several Congressional investigations, 45,000 pages of analyses, comments and testimony and thousands of lives[24]. Mr. Reilly, the US EPA administrator, estimated that the ban on this cancer causing material could save 1900 lives by the turn of the century[25]. No sooner was the program announced than it was angrily denounced as being insincere and politically motivated. Leading the charge was the government of Quebec, a Canadian province with a substantial stake in asbestos mining. A Quebec labour leader went so far as to warn other countries "not be duped by the phoney concerns" of the US administration[26].

Intervening to assert the interests of the Quebec asbestos mining industry, the government of Canada has joined in a legal challenge to the US EPA initiative. In its brief to the US Court of Appeals for the Fifth Circuit, Canada argues that US asbestos regulations under the Toxic Substances Control Act violate US obligations under GATT and FTA and makes the following argument:

Moreover under Article 603 of the Canada-U.S. FTA the parties may not adopt standards-related measures that create unnecessary obstacles to trade. Unnecessary obstacles are deemed not to be created if the measures achieve "a legitimate domestic objective". While the protection of human life or health is a legitimate domestic objective, Canada submits that to the extent that the EPA rule bans the importation of products that not cause unreasonable risks to life or health, the rule is not necessary to achieve a legitimate domestic objective, and therefor runs counter to U.S. FTA commitments.[27]

The case has yet to be resolved, but if US asbestos regulations are successfully challenged as being at odds with US obligations under GATT and FTA it will not be the first time that a legitimate domestic environmental program succumbs to such a challenge. For example Canada and the EC successfully used the GATT to challenge a US Superfund Act (1988) tax on petroleum[28], and the EC has recently prevailed with similar arguments to assail Danish waste reduction laws requiring that all beer and soft drinks be sold in refillable containers[29].

Canadian Acid Rain Controls

In a similar vain the US non-ferrous metals industry has used a provision of the US legislation implementing the FTA to challenge Canadian pollution control programs which include loans and investment credits. The Non-Ferrous Metals Producers Committee (NFMPC) has assailed, as unfair trade practices, a variety of federal and provincial programs intended to reduce emissions from, and improve workplace safety in, several Canadian lead zinc and copper smelters. The US Trade Representative has determined that there is "a reasonable likelihood" that this complaint is well founded and investigated these Canadian pollution control programs[30].

Were the NFMPC position to prevail, Canada might choose to abandon these environmental programs rather than face retaliatory action. It was precisely this path that the Province of British Columbia recently chose when it abandoned reforestation programs that were regarded by the U.S. forest industry as representing unfair subsidies to their competitors in Canada.

Of course some environmental and resource conservation initiatives will influence the trading or competitive position of local businesses, some may even provide a relative competitive advantage. What is so problematic from an environmental perspective is the notion that, anytime an environmental program helps rather than hinders the competitiveness, it then becomes suspect and vulnerable to challenge as an unfair trading practice. It is a proverbial "Catch 22" to allow only environmental initiatives that hurt the international competitive position of the business community while at the same time denying countries the right to protect those same businesses from the advantage that foreign competitors may gain from being subject to no similar regulation.

Irradiated Food and Lead Solder

More insidious than the effects of direct challenges to environmental programs or regulations is the chilling effect that can be exerted simply by the prospect of such a challenge arising. Governments are keenly aware of the potential implications of new regulatory initiatives and have a strong inclination to accommodate corporate interests before the point of confrontation is reached. In many cases, regulators will simply anticipate and avoid the prospect of confrontation by not putting forward initiatives that will provoke a strong response from powerful and influential corporations or business associations[31].

For example, Canada's Department of Consumer and Corporate Affairs has responded to Canadian environmental groups which advocate labelling for irradiated food that is more explicit than has been adopted in the US, with the following:

> *It is recognized that the labelling requirements of Canada and the USA may need to be further coordinated to avoid a potential non-tariff trade barrier."*[32]

Similarly, the Federal Department of Health and Welfare Canada has rejected demands for more stringent lead in food guidelines, that would restrict the use lead soldered seems in food containers, arguing that such an initiative could be challenged as an unfair trade practice[33].

It is important to recognize that for every time a regulatory official is willing to candidly admit that some real, or perceived, trade constraint has influenced his or her judgment about the viability of a particular regulatory measure, there are undoubtedly many more occasions when these considerations remain unarticulated.

Where the Environmental Cost of Doing Business is Cheapest

Another way in which the principles of free or deregulated trade have operated to undermine environmental regulation is by making it easier for corporations to establish, or relocate operations to jurisdictions where the cost of doing business, including the cost of environmental regulation, is lowest. Not only do these dynamics discourage incipient efforts at environmental regulation in poorer nations determined to attract investment, but will as well create pressure for developed countries to reduce environmental standards to a lower, and more common, denominator.

Corporate polluters have often used the implied or explicit threat of disinvestment and plant closures to mobilize opposition to environmental protection and occupational

health regulation. As the Canadian Chemical Producer's Association has "explained" in response to proposals to establish worker and community "right to know" legislation:

> *It is a fact that if unnecessary or excessive costs are introduced unilaterally by any country, (or province), innovation and development will simply cease or be transferred to jurisdictions with a more favourable business climate. Should this happen in Canada, it would be quickly reduced to a warehouse for chemicals.*[34]

In the only GATT study to specifically address an environmental dimension of international trade the phenomenon is described this way:

> *".. polluting industries in the countries with the most exacting standards would thus become relatively less profitable, their expansion would slow relatively to that of corresponding industries, and there would be a tendency for these industries to move out of countries with relatively heavy direct costs of pollution abatement..."*[35]

The negotiation of the Canada-U.S. Free Trade Agreement offered several illustrations of the corporate community making precisely these arguments. On the US side, the National Coal Association used the pending agreement as a rationale for calling for the removal of " regulatory disincentives " that stand in the way of new coal-fired power plants[36]. In Canada the Ontario Chamber of Commerce argued that air pollution regulation be "relaxed" to enable business to compete in the free trade environment[37].

Because of free trade in hazardous waste at least one Canadian hazardous waste management company advertises the absence of stringent US liability requirements as an incentive to attract US business. When the US was considering strengthening hazardous waste export controls to require that other jurisdictions meet US standards before exports to that jurisdiction would be approved, the Canadian government became the principle lobby opposing the initiative[38].

Dramatic differences in the cost of environmental regulation exist with the Maquila or free-trade zones along the Mexican border. Several instances of industries moving to the Maquilas to escape costly regulation in the US have recently been documented[39] and this option promises to become increasingly popular if a tri-lateral free trade negotiations succeed[40].

A company that chooses to achieve a competitive advantage at the expense of the environment will run no risk of running afoul of the FTA because a failure to regulate could not be challenged under the FTA as representing a subsidy. In fact the export of polluting industries to less regulated jurisdictions is not perceived by the GATT study as at all a bad thing:

".. it would not seem desirable for any country to adopt measures designed to stem such flows of investment and trade as might result from international differences in pollution control norms."[41]

The Lowest Common Denominator of Environmental Regulation

With two exceptions the Canada US FTA is silent on the subject of environmental standards. Those exceptions concern technical standards at the Federal level (Chapter 6) and pesticide and food safety standards (Chapter 7). In each case the provisions of the FTA are intended to promote the harmonization of standards, testing procedures and regulations. The question that arises of course is whether harmonization requirements will raise or lower standards to a new common denominator.

Apart from the economic pressures created by deregulated trade that militate in favour of the lowest common denominator of environmental protection, the specifics of harmonization proposals strongly reinforce this tendency.

Pesticides

For example,Schedule 7 to chapter 7 of the FTA specifically concerns pesticides regulation. It provides that the U.S. and Canada must "work toward equivalent guidelines, technical regulations, standards and test methods" for pesticide regulation. In particular, Canada undertakes to work toward equivalency in "the process of risk/benefit assessment". In Canada pesticides are licensed pursuant to the provisions of the Pest Control Products Act which does not mandate risk/benefit analysis but rather places emphasis squarely upon demonstrating the safety of the pesticide in issue.

In contrast, U.S. pesticide legislation requires a balancing of risks and benefits. It is an approach that environmentalists have argued against for years. The differences between the U.S. and Canadian approaches are quite real. In the U.S. there are 20% more active pesticide ingredients registered for use and over 7 times as many pesticide products.

One pertinent example is the herbicide alachlor (lasso), a probable human carcinogen, which the U.S. continues to license, but is banned in Canada. Alachlor, which has been demonstrated to cause tumours in test animals has been found in both ground and surface waters across Canada. According to Health and Welfare officials the evidence of carcinogenicity was the most convincing they had ever seen for a pesticide. Yet the U.S. found that the benefits outweighed the risks of alachlor and continues to register it. Not surprisingly, the manufacturer has argued that Canada's licensing criteria should also be founded upon a risk/benefit assessment.

Creating a Ceiling for Regulation

The harmonization provisions of the FTA should be seen as part of a larger strategy being pursued by the U.S. and Canada to harmonize standards at an international level. The likely consequences of the harmonization requirements of the FTA are easiest to discern from the nature of those international proposals.

If these harmonization proposals succeed, the GATT would be amended so that food additive, pesticide residue and other food safety and environmental standards would have to conform to international norms. While the development of international consensus around environmental standards may be a desirable objective, there are several reasons to suspect that the intent of harmonization proposals is to undermine progressive environmental standards, while removing standard setting processes to institutions that are less accountable to the community and more amenable to corporate influence and control.

To begin with, harmonization proposals are being promoted by those who see them as a way to block initiatives to strengthen food safety standards in the US and Europe[42]. In addition, harmonization proposals explicitly seek to reduce food safety, and environmental standards to scientific propositions to be determined by international science panels. A consensus of international scientific opinion then becomes the necessary precondition for environmental regulation. Ethical and social considerations would not enter the equation. Furthermore, by assigning the task of standard setting to international panels, the prerogatives of elected and accountable institutions would also be diminished.

Finally, and perhaps most telling of the intent of present harmonization proposals, is the fact that they would operate as ceiling but not as a floor for environmental regulation. Thus any country that attempted to implement food safety or environmental standards that were tougher than international norms, and apply those standards to imports and domestic production, would risk suffering retaliatory trade sanctions.

It is in this respect that harmonization regimes may devastate the prospects for progressive environmental regulation. This is true because of the dynamics of environmental regulation - where progress occurs when one jurisdiction blazes a trail that others are then encouraged to follow. Thus environmentalists point to California's auto exhaust standards, Sweden's air pollution laws for waste incinerators, Ontario's curb-side recycling programs or Austria's packaging laws as demonstrable evidence that tougher environmental laws are possible and practical.

The effect of harmonization proposals that would establish a ceiling on environmental regulation would be to critically interrupt this fundamental dynamic of environmental regulatory progress. All countries would then move only when an international

consensus could be established about the need for a particular environmental standard. In most instances this will slow, if not entirely defeat, the establishment of progressive environmental regulation.

For those corporate interests that oppose environmental regulation the importance of preventing the trend setting initiative is well understood. For example, when Canada intervened to challenge US EPA asbestos regulations it did so as much to discourage other jurisdictions from following suit, as it did to protect export markets in the US. In the words of the Minister of Mines for the Province of Quebec:

> " (the) biggest fear is that other countries will follow the US example. The European Community ... could following the U.S. decision, adopt analogous regulation. We also fear the impact of the EPA decision on development projects in countries receiving American economic aid"[43]

Echoes of the harmonization argument also reverberate throughout the legal intervention by Canada that challenges EPA asbestos regulations as being unsupported by an international scientific consensus[44]. If the new rule becomes that nations are only entitled to move forward with environmental initiatives in lock-step, the prospects of meaningful environmental progress dwindle to insignificance.

Behind Closed Doors

The final way in which the principles of free trade defeat environmental initiatives is by providing a means to circumvent the accountable and democratic institutions that are increasingly willing to respond to public pressure to protect the environment and conserve resources. Trade negotiation and dispute resolution processes are notoriously secretive even by the norms of international diplomacy. Thus by characterizing environmental regulation as a non-tariff trade barrier, it can be removed to a less public and more sympathetic forum. The result is a de facto deregulation of process, which effectively erodes the prerogative of democratic and accountable institutions, to consider and legislate matters of vital public policy.

Negotiations between the US and Canada will soon be under way to implement the harmonization provisions of the Agreement. The results will significantly influence packaging-related standards, workplace health and safety regulations and other matters that have considerable environmental significance. Advisory committees have already been established to assist with those negotiations, [45] but as is true for present GATT negotiations, no environmentalists are participating in these discussions, nor have they been invited to do so[46].

CONCLUSION

This assessment of the environmental consequences of the first two years of free trade between Canada and the US is unfortunately far from complete. One of the consequences of this new trade regime has to re-introduce the era of back room negotiations that use to characterize government-corporate relations concerning environmental and resource management issues. For this reason many of the influences the FTA are difficult to identify or track.

Specific examples of the adverse environmental impacts of the FTA are of course very helpful in revealing the relationships between the environment and trade. However it is the structural and economic realities of free trade that will give rise to its most serious and adverse environmental impacts. To understand these cause and effect relationships it is important to recognize that many of the environmental issues we confront are the symptoms, and not the causes, of unsustainable economic and resource policies. For example: we will never win the battle of to reduce pesticide use unless we confront the agricultural and trade policies that make the use of pesticides inevitable. The same can be said of virtually all of the pollution battles we are waging.

The first step then, is to develop an understanding of the structural relationships between international trade and environmental and other issues. The second is to insist that no trade policy be adopted unless its environmental consequences have been thoroughly assessed. Here, the evidence strongly indicates that an objective appraisal of the environmental consequences of free trade will cast into great doubt, the ecological viability of the precepts of liberalized, or de-regulated trade.

The next step is to develop the alternatives. How would trade agreements be negotiated if negotiations are to occur in a democratic and accountable manner? How can the rules of international trade be crafted to encourage, rather than diminish, the principles of environmental protection? What would international trade relationships be like if they were derived from the principles of sustainable and equitable resource policies?

endnotes

1. The federal Minister for International Trade in response to a question on the House of Commons order paper during the fall of 1987; see "FREE TRADING THE ENVIRONMENT" Frank Tester, in "THE FREE TRADE DEAL" Lorimer, 1988.

2. Efforts by Canadian environmental organizations to engage the interest of US environmental organizations in assessing the likely environmental consequences of the FTA were unsuccessful. The awareness now shared by many US environmental groups of the importance of environment-trade relationships was unfortunately not in evidence during 1988 when the campaign to force an environmental consideration of the Deals consequences was in full swing.

3. US President Reagan has made similar comments emphasizing, in his announcement of the bi-lateral trade deal, on October 4, 1987, that the agreement would "improve our security through additional access to Canadian energy supplies"; as quoted by John Dillon in "Continental Energy Policy", The Free Trade Deal; ed. Duncan Cameron, (Lorimer & Company: Toronto,1988).

4. Article 904 of the Canada-U.S. Free Trade Agreement explicitly prevents either government from restricting the export of energy resources, for any other than "national security" reasons, unless supplies are rationed, to the same extent, domestically. The important right under GATT rules to use export taxes as a mechanism for resource management and conservation, is abolished by the agreement. For example, compare with Article XX of GATT. Bill C-130, that implemented the Agreement in Canada, abolishes a central tenet of Canadian energy policy and compels the National Energy Board (NEB) to issue an export licence even in the face of Canadian shortages. While the NEB may attach terms and conditions to its approval in order to mitigate environmental impacts - it can not refuse a license for environmental reasons.

5. Article 906 provides: "Both parties have agreed to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for future energy resources." The only other category of government subsidy that is accorded this special status is defense spending.

6. Marbek Resource Consultants, A Preliminary Assessment of the Applicants' Submissions to the Environmental Screening of Gas Export Licenses Issued Under GH-10-88, September, 1990.

7. For example, see Esso, Imperial Oil, A Discussion Paper on Potential Global Warming, March, 1990.

8. National Energy Board, Reasons for Decision GH-10-88, August 1989, p.1.

9. Standing Senate Committee on Energy and Natural Resources, Natural Gas Deregulation and Marketing (12th report)(September 1988)(Chair E.A. Hastings) at p.1.

10. Supra, fn.4.

11. Globe and Mail, Report on Business, "Bitter Dispute on Gas Exports Springing From NEB Decisions", January 15,1990.

12. NEB decision

13. Andre Picard, The Amicus Journal, James Bay II, Fall 1990.

14. Maude Barlow, Parcel of Rogues, How Free Trade is Failing Canada, Key Porter Books, Toronto, 1990, at p.162.

15. Le Procureur General Du Quebec -et- L'office National de L'energie, (application filed before the Court of Appeal for the Province of Quebec, October 26, 1990.)

16. Globe and Mail, Report on Business, Dennis Bueckert "Protectionism May Motivate Standards", Oct.9,1990.

17. The Globe and Mail, Report on Business, Terence Corcoran, "Risk of Trade War Wrapped in Recycled Newsprint", Jun.27,1990, quoting Adam Zimmerman, Chairman of Noranda Forest.

18. Idem.

19. In the Matter of Canada's Landing Requirement for Pacific Coast Salmon and Herring. Canada - United States Trade Commission Panel, October 16, 1989, 2TCT 7162.

20. Idem.

21. Idem.

22. The Globe and Mail, Letters to the Editor, October 28,1989.

23. See Globe and Mail articles: "GATT Ruling Imperils Farming, Premier Says" Sept.21, 1989; "Canada and U.S. Haggle Over Dairy Import Duties at GATT Talks", Oct.12, 1989.

24. Wall Street Journal, Johnathan Dahl, "Perilous Policy: Canada Promotes Asbestos Mining, Sells Carcinogenic Mineral Heavily in Third World", Dec.9, 1989.

25. Globe and Mail, Report on Business; Andre Picard and Harvey Enchin, "Quebec planning to fight U.S. asbestos ban", July 7, 1989.

26. Idem.

27. See Corrosion Proof Fittings, et al., v. Environmental Protection Agency, and William K. Reilly: Brief Amicus Curiae of The Government of Canada, pp. 18-19. (In The United States Court of Appeals for the Fifth Circuit, May 22,1990).

28. OECD, Trade and the Environment: Issues Arising With Respect to the International Trading System, (Note by the Secretariat) Paris June 29, 1990. TD/TC (90)14.

29. Re Disposable Beer Cans: E.C. Commission v. Denmark; the European Court of Justice, September 20, 1988. Reported in [1989] 1 C.M.L.R. 619.

30. Gatt Fly, U.S. Companies Use FTA to Attack Regional & Environmental Aid, (Toronto, September, 1989).

31. Ted Schrecker, "Resisting Regulation: Environmental Policy and Corporate Power", Alternatives, Volume 13 Number 1, December,1985. Also see infra "Disinvestment and Job Blackmail".

32. Consumer and Corporate Affairs Canada, Communique no. 52, June 4, 1988.

33. In an interview by Nancy Dawkins of the CBC show "Marketplace" with Dr. Bev Houston, Chief of the Chemical Safety, Food Directorate, Health and Welfare Canada.

34. CCPA, Position Paper on Confidentiality, reproduced in Appendix C of Roundtable Discussion on Toxic Chemicals Law and Policy in Canada, Toronto, Canadian Environmental Law Research Foundation, 1981.

35. GATT: Studies in International Trade, Industrial Pollution Control and International Trade, (Geneva, July 1971), p.11.

36. National Coal Association, Statement on Behalf of the National Coal Association on The Canada-U.S. Free Trade Agreement, before the Energy and Resources Committee, United States Senate, April 21, 1988.

37. James Carnegie, general manager of the Ontario Chamber of Commerce, as quoted in Andrew Nikiforuk, Free Trading Our Environment, Nature Canada, 15(3) summer,1986, p. 40.

38. For one account of Canadian activities in this regard see Environmental Matters (Industry's Guide to the Issues, the Challenges and the Solutions) June 1990, EM10.

39. Furniture manufacturers flee .....

40. Los Angeles Times, Chris Kraul, "A Warmer Climate for Furniture Makers", May 14,1990.

41. Supra fn.35.

42. For example, Clayton Yeutter, Secretary of Agriculture for the United States Government, has characterized the European Economic Community's ban on growth hormones as a "clear non-tariff barrier" (in a letter to the Honourable Ray McSharry, Member, Commission of the European Communities, July, 1989). Mr. Yeutter is one the principal and outspoken advocates of proposals to harmonize sanitary and phyto-sanitary regulations.

43. Mines Minister Raymond Savoie, supra fn. 25.

44. Supra fn.27.

45. For example, negotiating teams are presently constituted to address standard harmonization for packaging. The results will have a significant bearing upon the ability of both jurisdictions to implement waste reduction initiatives. Yet no environmental group is represented, neither has any public notice been given of the exercise. Rather, negotiating teams are predominantly comprised of representatives of government and business (personal communication with Larry Dworkin, September 1989, who represents the Packaging Association of Canada on one of the packaging negotiating teams.)

46. The International Trade Advisory Committee (ITAC) which exists to advise the Canadian Government on GATT negotiations, includes no representatives of either environmental or consumer groups. See Canada, News Release Minister for International Trade Announces Make-Up of New International Trade Advisory Committee, No.179, Aug.17,1988.