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BACKGROUND AND PURPOSE OF THE WORKSHOP

“Keeping the Borders Open”

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This workshop, *Keeping the Borders Open*, is the eighth in a series organized by the Policy Disputes Information Consortium. The NAFTA was in its infancy when the first workshop was held in 1995. Since then, largely as a result of North American market integration spurred by free trade agreements, trade in agri-food products among the NAFTA members has exploded. As tariffs have fallen trade, has not only expanded but it has been rationalized. NAFTA member trade has grown to such an extent that Canada is nearly as dependent on access to the United States market as it is on its own domestic market. However, this improved economic performance and market integration brings with it a new set of trade related problems. These new problems stem largely from the fact that North American market integration is incomplete, and that few NAFTA institutions have been created.

It is widely understood that as tariffs are negotiated downward non-tariff barriers to trade become more important. This is especially true in agriculture where sanitary (human and animal health) and phytosanitary (plant health) as well as technical barriers to trade are common. Ideally, inside a free trade area (FTA) products move across the borders of member nations as easily as they flow between different areas within a country. However, this ideal is difficult to achieve. Tariffs are transparent and eas-

ily monitored by customs agents and trade ministries, and traders are aware of pending reductions. However when an FTA is formed, many potential non-tariff barriers remain and they tend not to be transparent, and even when identified, not easy to change. One of the most challenging areas involves sanitary and phytosanitary (SPS) regulations and technical barriers to trade. The goal is to make sure that these regulations in NAFTA facilitate, or at least do not to hamper the increased trade flows resulting from tariff elimination.

It seems reasonable to set the standard for successful integration of member nations regulatory schemes within NAFTA higher than among non-member nations. However, the problems of integration are similar across all countries. Domestic regulations reflect the culture, geography, stage of development and language requirements of the home country. Most domestic regulations are designed to solve local problems and in solving these problems generally create costs and benefits for certain groups in the economy. When an attempt is made to change a regulation as a result of an FTA there is often an initial round of inertia, or active opposition as domestic “losers” attempt to preserve the status quo. When domestic regulations are changed as a result of bilateral or multilateral negotiations, nationalists also decry the loss of sovereignty. At other times there will be active rent seeking among those who see positive benefits from the proposed regulatory changes. It is also possible for producers in one NAFTA country to bring trade action against another NAFTA partner using domestic trade remedy legislation. Some of these cases result from different forms and levels of protection for primary agriculture in the NAFTA, and others have no foundation in basic economic principles.

This publication presents all of the papers and most of the discussion comments that were presented at the workshop in Puerto Vallarta March 7 to 9, 2002. As in other workshops, participants were drawn from academia, the agribusiness sectors, government officials with policy making responsibilities and interest groups in each of the three NAFTA signatory countries. This workshop was conceived within the general backdrop of the discussion immediately above as well as some devastating evidence from the UK of what happens when borders close due to outbreaks of

serious diseases like BSE and foot-and-mouth. Little did we know that before this publication was released, the Canadian cattle, sheep, goat and wild game sectors would be rocked by the discovery of one cow in northern Alberta with “mad cow disease.” The borders did not stay open.

This workshop is focused on policy inconsistencies in the NAFTA region involving:

- different rules and procedures surrounding food safety, and animal and plant protection; and
- the continued use and potential abuse of trade remedy laws.

The workshop begins with an overview paper that highlights the current rules in the NAFTA member countries as they relate to human, plant and animal health. There is little doubt that sanitary and phytosanitary measures can be used as a trade barrier, but there is also no doubt that sanitary and phytosanitary measures are required. Hence, the issue is one of striking a balance and it seems unlikely that the best way of fighting and eradicating disease is on a nation-by-nation basis. Can scientific rules be established and enforced in a way that preserves most of the economic benefits of North American market integration, while at the same time being effective in preventing plant and animal disease problems? If so, what new institutions are required and what role should trinational or international organizations play in establishing the co-operation and harmonization among national regulatory bodies?

Following the overview paper on sanitary and phytosanitary issues the workshop turns to specific problems in three commodity sectors:

- cattle, which involves the movement of live animals and meat between all three member nations;
- fruits and vegetables, with an emphasis on avocado’s, where most of the problems have been between the United States and Mexico; and
- grain diseases, in particular wheat karnal bunt, which has influenced United States wheat exports to and through Canada and Mexico.

For each of these commodities the authors were asked to discuss the regulatory framework that surrounds the SPS issues in that particular sector. In addition, they were asked to address the use of risk analysis in relation to the economic costs and benefits of SPS problems. Finally, the presenters were asked to discuss options for harmonizing regulations among the NAFTA partners with the goal of minimizing the economic costs of SPS problems.

The next paper in the SPS session deals with the current regulatory structure in the farm chemical industry. This is an area in which the NAFTA working group on pesticides has been quite active and yet the perception of significant regulatory differences among NAFTA member countries remains. There are perceptions in this market that the playing field in registered chemicals and pricing is far from level. The final paper in this session presents policy options for SPS issues. These include: 1) the status quo, 2) mutual recognition, 3) equivalency and/or harmonization, and 4) joint NAFTA agencies.

The second major issue considered in the workshop was the use and potential abuse of trade remedy laws. Both Canada and Mexico tried to get exemptions from United States trade remedy laws when their free trade agreements were signed. Neither was successful, although new dispute settlement mechanisms were created. However, the fact remains that private business practices that would be legal when used within a NAFTA country can be subject to successful legal challenges when used outside the home country. This session begins with an overview paper that describes domestic trade remedy laws in each of the three NAFTA member countries. These laws are expected to be compatible since they are all based on the relevant World Trade Organization provisions. However, the WTO rules are not self-executing and have to be translated into domestic laws and specific rules for their application developed. Hence, there is the potential for the application of these laws to be different.

There is a general impression of an increasing number of trade disputes since the formation of the NAFTA. The second paper in this session addresses this question. The authors examine the frequency of

trade disputes before and after the formation of the NAFTA and also the frequency of agri-food disputes in relation to all trade disputes. The authors address the question of whether trade remedy actions within a free trade area make economic sense, and if there are alternatives to anti-dumping and countervailing duty actions.

These two general papers on the application of trade remedy laws provide the “facts;” the program was designed to then present four case studies to see how trade actions have worked in practice. The first paper dealt with the United States anti-dumping case against Canadian green house tomatoes, and Canada’s counter case against United States field tomatoes. The second case study dealt with the countervailing duty action that Manitoba corn growers brought against the United States. The third case study dealt with the on going dispute between the United States and Mexico regarding trade in sugar and sweeteners. This problem was, in theory, “solved” during the NAFTA negotiations but it remains a source of trade tension today. Finally, the case studies conclude with a discussion of the Section 301 case brought by the United States against the alleged unfair trading practices used by the Canadian Wheat Board, another in a long string of similar actions since 1988.