

## The Lessons of the FTAA<sup>1</sup>

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Before reflecting on lessons of the FTAA, it might be helpful to situate “Canada within the Hemisphere”. Fifteen years ago, the very notion would have been an oxymoron. Canada had little interest in, or engagement with, the Americas.

That sense of distance began to disappear in the 1980's when Canada's search for a home region was decided by our decision to enter into the free trade agreement with the USA.

We became, in one step, a country of the Americas, and in short order became active members of the Hemispheric Community of democratic nations.

Canada entered the OAS in 1990. In 1994, we joined with Mexico and the US in NAFTA. We have since concluded free trade agreements with Chile and Costa Rica, and are exploring them actively with the other countries of Central America and the Caribbean. Investment agreements and trade facilitation arrangements tie us to others in the region. We have been seeking closer ties with Mercosur for some years.

And, crowning a decade of deepening participation in the Hemisphere, Canada hosted the Third Summit of the Americas in Quebec City last April. So we do have some experience to draw on.

What “lessons” does it teach that are relevant for the FTAA? There are general, but one is key to all the rest:

I. Trade liberalization today is about far more than trade. Trade plays a role so important in our economies that it also impacts, not only on economic policy, but also on a country's social and political framework.

The degree to which a country is able to realize benefits from trade liberalization depends on both the capacity of these frameworks to change and the degree to which policies these domains are coherent and mutually supporting.

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Leaders agreed in Quebec City that the positive energy of free trade will be snuffed out if it is introduced into a policy vacuum or into an unreceptive, or unsupportive policy environment.

The investments necessary to develop exports will not be attracted nor be sustained without good governance; good governance is not sustainable in poverty engendered by a closed economy; neither economic efficiency nor good government are possible without the fullest participation of citizens as producers, innovators, entrepreneurs, consumers and social actors.

Free Trade then, is a desirable way of stimulating positive systemic change, but it is of itself no more than opportunity - the capacity to take advantage of it lies in the strength, openness and adaptability of the economy and of the political and social systems.

That would be the overriding “lesson” and it was what was drawn by leaders in Quebec City: that we must pursue the FTAA, but not in isolation. It is and must be part of a broader agenda for sustainable, positive change in our societies. Otherwise it could become the scapegoat for failures elsewhere.

Free trade is not a panacea. Often far reaching and politically difficult adjustments are necessary to gain the benefits from a Free Trade Agreement.

Even though we have benefited **powerfully** from the NAFTA, some say that Canada has not made sufficient adjustments to benefit **fully** from it- that our floating currency, for instance, has had the effect of cushioning our economy from the pressure for adjustment. Perhaps the adjustment required of us for satisfactory returns were too easy. Mexico, on the other hand, has certainly made painful adjustments, and these have been both transformative: The industrial economy of northern Mexico has become closely integrated with the North American system. Fiscal policy adjustments allowed Mexico to overcome the '94 peso crisis in short order; the adjustment in the political system permitted a peaceful, credible and democratic transition to the Fox administration.

Let me go on to some other more explicit observations:

II. The second “lesson” is that the less (or more) the distance among the parties in terms of their domestic policy frameworks (for the economy, governance and social organization), the easier (or tougher) is the politics of negotiating free trade.

The Canada/US FTA was politically uncontentious in the US (though very

challenging in Canada) because Canada was seen to be part of a shared system of values, with credible public institutions and a complimentary economy.

NAFTA proved to be far more controversial in the USA because of the sense of systemic differences which triggered fears (in the US) of both policy contagion (eg re-lowered shared environmental standards) and protectionist concerns about loss of jobs in a stilted competitive environment. (The transformative benefits of NAFTA for Mexico carried relatively little weight in American public discourse, even though they featured heavily in the Administration's calculations).

NAFTA was a tough political sell in the U.S., but the FTAA is likely to be tougher still given the diversity of systems and the less obvious nature of US interest engaged in the Hemisphere.

**It is clear that part of the FTAA bargain has to be to agree to address the framework differences, as it was for NAFTA, on issues like environmental protection and labour standards.**

This does not necessarily have to be done within an FTAA, and certainly not in a way that involves sanctions, but the issues have to be addressed somewhere. There are three reasons:

First is the need to satisfy public opinion in the U.S. and Canada (and now Mexico) that free trade does not mean the dilution of existing national framework in these areas or the perpetuation of two standards , one for the North and one for the South.

The second reason is tactical . The South parties could use concessions they make here to satisfy North demands for higher standards in these areas( which would, after all, also be in their long term social interest) for constructive bargaining on a comprehensive agreement.

Third, is that agreements (however formulated) in favour of improved standards, can be used to lever cooperation and to stimulate the North/South transfer resources in these areas.

One last observation directed at those who think that such "side" agreements cause more trouble than they are worth: They are not. Labour standards and environmental protection were addressed in NAFTA side agreements. Doing so calmed public criticism - and the provision calling on NAFTA states to respect their own national legislation, while a useful discipline, has not been troublesome among the parties. Secretariats are in place to handle disputed cases, but there have been none. In the case of Canada and Mexico, the side agreements have led to an intensified cooperation in improving Mexican

governance capacity, and the US and Mexico established NAD Bank to finance environmental improvements in the border region between them.

This then is the second “lesson” from NAFTA: systemic differences inevitably intrude in the politics of free trade. We need to accept this fact and deal with it.

III. The third “lesson” is that the impact of free trade on different parties varies according to the degree of difference in size relative to the dominant party. The fragile capacity of small states to accept FTAA disciplines (and there are some very small states involved) must be respected. They need special and differential treatment, something recognized at Doha, and they need technical assistance both in negotiating the agreement (learning and applying the rules to their own situation) and in implementing it.

IV The fourth lesson is that the very process of negotiating free trade helps everyone think more clearly about trade related policy. The FTAA negotiations have already been of value as a powerful learning experience for all the parties. Support for learning will continue to be needed, and there will be opportunities for the legal profession to share in providing it.

V. The fifth “lesson” is that free trade agreements do not remove all of the problems in even a mature trading relationship. The areas not covered by the agreement, are, by definition, those that are politically the most contentious (I think for example of softwood lumber). They will continue to be so until there is either a level of integration so high that there are no systemic differences left that would justify protection, or compensating mechanisms have been provided to offset the political power of those interests demanding protection.

VI. The sixth “lesson” derives from our experience with Chapter 11 of the NAFTA, where an instrument intended to assist one partner to apply necessary disciplines (for investor protection) was turned into a commercial tool by sophisticated litigants. The lesson here is to be careful about the law of unintended consequences.

VII. The NAFTA experience also teaches another lesson: that free trade is a process, and on present experience at least, irreversible. Success demands more success. Opened access demands more access. As Helmut Schmidt described the European construction process, building free trade is like riding a bicycle - it is essential to keep moving forward to avoid the risk of falling off.

This has certainly been the case in North America. The success of NAFTA has increased our interdependence. To put it another way, it has raised our mutual vulnerability. NAFTA allowed us to manage a certain level of rtrade interdependence well>

That success has encouraged our economies to commit to long term investment and other strategies that assume guaranteed unimpeded flows within North America. Whatever safety net might have existed before for the Canadian economy "in case free trade fails" is now gone. For lack of real options the economy demands new instruments to provide greater certainty within the North American economic zone.

Mexico and the United States are now attempting to advance liberalization of labour markets between them to take advantage of and sustain increased economic activity.

Mexico is arguing for a shared approach to regional development to spread the benefits of open markets.

Canada and the United States, for their part, are building an "area of mutual confidence" to safe-guard their shared security in the face of global challenges (an area in which Mexico would also become a partner) in part to ensure that the border between them does not become a barrier to the flows that now unite the two economies (which in merchandise trade alone amount to \$1.5 billion per day).

In short, while free trade needs plateaus of time during which the effects of liberalization are absorbed, the process can never stop without counting (increasingly catastrophic) disruption.

VIII. **Free trade, to be sustainable, requires a clean quid pro quo.** That trade-off between partners with modest systemic differences is relatively straightforward and focussed on issues of access. It was tough to define the CAN/US FTA quid pro quo, but it involved a narrow range of policies and has been easy to sustain. The case is very different among economies with significant systemic differences and great asymmetry in size.

The quid pro quo in the case of the CAN/US FTA were very different from NAFTA. It is far more complex still in the FTAA. The FTAA process is based in a bargain articulated in 1990 and codified in Miami in 1994. **In exchange for free access to US markets, the countries of the Hemisphere would liberalize their economies and democratize their societies.**

FTAA negotiations have advanced since Miami, but there has been a time lag in the parties' fulfilment of their commitments. Countries of the Americas have moved (unevenly) towards liberalization and embedded democracy. The US, however, has not until recently been able to demonstrate the political will to provide guarantees of free market access. Even now, the Trade Facilitation Authority that the House has provided, falls short. Firm and comprehensive guarantees of access are needed to support sustained reform in often tenuous economies and poorly integrated societies of the Americas. Access in

sensitive sectors like citrus, sugar and textiles, as well as trade remedies will have to be on the table.

But the United States' partners also need to approach the negotiations as "negotiators" ie not demand pre agreement on concessions by the US before they engage. It won't work. Canada's experience in the FTA is illustrative: "Nothing is agreed until everything is agreed" - and that might not happen, quite literally, till the last minute.

The FTAA quid pro quo then will be a challenging one to strike when Brazil and the United States assume responsibility for the final stage of negotiations.

IX. A last "lesson" I would point to is that the parties cannot wish away the involvement of (Northern) "civil society" in the negotiating process. "Civil society" actors claim, for better or worse, to be the vocal proxy for public opinion. They are organized and do have access to mass media. They do exercise political power(though we should not exaggerate it).

The questions "who is civil society" and "whom does civil society represent in a democratic society" are both interesting, but are a way to avoid the real issue. "Civil society" has to be engaged. Canada has had considerable experience with civil society's involvement in public policy - some very painful (eg in the MAI), some positive, and some both (Quebec City Summit). We learned from the experience. "Civil society" opposition to free trade, and more generally to "globalization" is based on fear. They mistrust governments, whom they suspect of colluding in an agenda to diminish sovereignty and the State's capacity to protect national societies. "Civil society" represents a spectrum of constituencies. Protectionist lobbies who transmute narrow self interest into the language of altruism are among them. So are the marginally violent for whom international conferences provide a sanctioned opportunity for self indulgent thuggery. But there are also, and they are in the majority, well intentioned individuals and organizations concerned about real issues.

We address ourselves to this majority, in a sprint of the greatest possible transparency, and with a coherent message. The message is the one I started with - that free trade is instrumental to but only a part of much broader efforts at change in favour of economic freedom, political democracy and social equity. That was the message of Quebec City, and the message, clearly articulated there, simply washed away the confused rhetoric of the critics.

We also saw the impact of transparency after Trade Ministers' breakthrough agreement to release the draft FTAA text in Buenos Aires.

The gesture (and it would have been even more effective if it could have been acted on immediately) took the wind out of the critics' sails. It obliged them to

assume responsibility to engage the issues, rather than exercise their prerogative to criticize without regard to the facts.

For the FTAA to move forward now, and to be sustainable for the longer term, we will continue to have to act in this spirit.

## **CONCLUSION**

Others will undoubtedly draw on their experience for other “lessons” for the FTAA. The most important, from my point of view is that public policy cannot, today, be made in compartments. Economic liberalisation, good governance and social participation are three legs of one stool.

Pursuing any one, independent of or even unmindful of its impact on the others is a recipe for failure. Ignoring one, similarly unbalances the system. The consequences of failure are no less tragic today than in the past. They include losing the real progress the Hemisphere has made on all three fronts in two decades of determined effort.