# AGRICULTURAL TRADE LIBERALIZATION UNDER NAFTA: THE NEGOTIATION PROCESS

*M. N. Gifford*

## INTRODUCTION

Most observers accept that regional trade liberalization and multilateral trade liberalization are not necessarily mutually exclusive and, in fact, can be mutually reenforcing. It is also generally recognized that while regional trade agreements are technically easier to negotiate (they certainly do not take as long to finish) and often go deeper and wider in their policy coverage, there are still limits as to how far a regional trade agreement can go when all the major players are not around the same negotiating table.

The NAFTA Agreement, as it relates to agriculture, is a classic example of the opportunities and limitations inherent in a regional free trade agreement. The following negotiating history explains why.

## MARKET ACCESS PROVISIONS OF NAFTA

At first glance, the Agricultural Chapter of the NAFTA Agreement is curious. In effect, it stitches together three separate bilateral agreements under a trilateral chapeau. In other words, some of the provisions are asymmetrical between member countries and commodities.

The reason for this outcome can be traced to the first negotiating session of the Canada/U.S. Free Trade Agreement(CUSTA). At this 1986 meeting, both Canada and the United States made it crystal clear that they were proceeding on the premise that while their mutual objective was to try to eliminate all agricultural tariffs, the most sensitive existing quantitative import restrictions would remain. This in fact is what finally occurred. Canada retained its GATT Article XI Import Quotas on dairy, poultry and eggs, while the United States maintained its existing Section 22 Import Quotas on dairy, sugar and peanuts. Both countries agreed, however, to eliminate their respective meat import laws on bilateral trade and Canada agreed to eliminate, on a bilateral basis, its import licenses on wheat, barley and oats once U.S. support levels fell to those of Canada.

The Canada/U.S. negotiations were ultimately successful in eliminating all normal agricultural tariffs but the most sensitive import quotas remained. This was the deal which emerged in 1987 and this is the deal which a NAFTA panel subsequently confirmed when the United States tried to argue later that the Uruguay Round obligation to convert quotas into tariff equivalents could not apply bilaterally because of the original FTA obligation to eliminate all (ordinary) tariffs.

The NAFTA negotiations were different from the original Canada/U.S. negotiations. Early in the NAFTA negotiations, the United States and Mexico agreed to tariffy all import quotas and phaseout all ordinary tariffs and tariff equivalents. Why? My own assessment is that both the United States and Mexico quickly recognized that if Mexico tried to protect its most sensitive sectors(corn and dried beans), the United States would be under extreme pressure to protect tomatoes, sugar and any other product a politically influential group wanted to add. The bottom line was that it was easier for the United States and Mexico to negotiate and sell a noexceptions market access result than to try to negotiate and contain a list of exceptions.

Because the NAFTA negotiations were concluding before the end of the Uruguay Round, the U.S./Mexico “No Exceptions” Agreement put Canada in a box. Canada did not want to prejudice its GATT negotiating position on “strengthening and clarifying Article XI.” If you recall your Uruguay Round

negotiating history, Canada did not agree to tariffication until December 1993, well after the conclusion of the NAFTA negotiations. Consequently, Canada and the United States decided to simply incorporate the original Canada/U.S. Agricultural Agreement into NAFTA without changes and to negotiate separate bilateral agreements with Mexico. Following conclusion of the Uruguay Round, the practical market access obligations between Canada and Mexico are nearly identical to the Canada/U.S. situation, i.e., agreement to phaseout all import duties except those on dairy, poultry, eggs and sugar.

In summary, while 100 percent of U.S./Mexico agricultural trade is scheduled to become duty free, Canada/U.S. and Canada/Mexico agricultural trade is still subject to tariffs or tariff rate quotas on a relatively short list of sensitive commodities. Of course, the vast bulk of trade is duty free or in the process of becoming duty free.

So far the discussion has dealt with only the market access provisions of NAFTA. However, it is worth noting what happened in other key areas, particularly, export subsidies, domestic support and sanitary and phytosanitary measures.

## OTHER KEY AREAS

***Export Subsidies.*** The NAFTA produced a mixture of bilateral and trilateral obligations. Export subsidies are prohibited in Canada/U.S. agricultural trade but are permitted vis-à-vis Mexico. The reason for this was that the United States wanted to reserve the right to use export subsidies vis-à-vis Mexico in order to meet subsidized European competition.

***Domestic Subsidies.*** With respect to domestic subsidies, it was agreed in the Canada/U.S. negotiations and confirmed in the NAFTA negotiations that disciplines on domestic support (like export subsidies to third countries) were best left to multilateral negotiations where the European Union (EU) subsidy practices would also be on the table.

***Sanitary and Physosanitary (SPS) Measures.*** I think it is fair to say that one of the most significant accomplishments of the Canada/U.S.

negotiations was the path breaking agreement on sanitary and phytosanitary(SPS) measures, which provided a blueprint for the Uruguay Round and NAFTA Agreements on this issue. Throughout all three negotiations, there was an explicit recognition that tariff liberalization must not be circumvented by the inappropriate use of SPS measures while upholding the right to take legitimate measures to protect human, plant and animal health.

Of course, duty free trade does not mean that import duties or quotas cannot be reintroduced under specified circumstances. Under NAFTA the three members retain their WTO rights to apply anti-dumping, countervailing or safeguard duties and, in the case of safeguards, import quotas. This to my mind is one of the key differences between Europe and North America. In the EU there is no provision for the use of trade remedies on intra-European trade. Common agricultural and competition policies have enabled Europe to forego the use of trade remedies. They are, however, still a factor, and unfortunately, a growing factor in intra-North American trade, particularly with respect to anti-dumping investigations.

In all three trade remedy situations, provisional import measures may be applied pending a final determination of injury. Thus, for the NAFTA members, trade remedy measures are two-edged swords. They can be used to protect domestic industries; and, they can also be used to impair access to export markets.

The recent anti-dumping actions on live cattle from Canada to the United States and beef from the United States to Mexico clearly indicate the vulnerability of highly integrated sectors to the various weapons in the trade remedy arsenal. Of particular concern to exporting sectors is the increasing tendency for the anti-dumping authorities to use constructed costs of production in determining whether dumping is occurring. Given the elimination of import duties, it is not very often that one can demonstrate export sales at below domestic prices. However, it is sometimes all too easy to demonstrate, in the case of agricultural products (which are subject to major seasonal or cyclical price fluctuations), that export prices are below some calculated cost of production.

The NAFTA governments are caught on the horns of a dilemma. They want to give their import sensitive sectors the right to have their day in court while at the same time preventing their trading partners from using trade remedies as a "legitimate" form of trade protection and harassment. This a debate which has only started but I predict it will become an increasingly contentious issue in NAFTA agricultural trade relations.

## A CUSTOMS UNION AND A FREE TRADE AREA

One of the key differences between a customs union and a free trade area is that common policies are not a feature of the latter while they are of the former. However, the experience of the NAFTA Agreements suggests that, while members can maintain national policies, they should be reasonably compatible with one another.

Some policies are clearly incompatible. For example, although it was not an explicit part of the Canada/U.S. Agreement, Canada's two-price policy for wheat could not continue in the face of duty free entry of flour, bread and biscuits. Thus, before the bilateral agreement came into force Canada had no choice but to eliminate this policy if it wanted to retain its milling and baking industry.

Of course, changes to domestic policies which are taken mainly for national and/or multilateral reasons can sometimes have effects on regional trade patterns. For example, the elimination of Canada's grain transportation subsidies (something U.S. grain interests had complained about for years), had the effect of lowering grain prices in the Prairies. This not only stimulated livestock production in Western Canada, it made the U.S. market relatively more attractive as a market for Canadian unprocessed grain and oilseed exports.

I realize I am starting to stray into the area of the impact of NAFTA trade flows and that is the topic of a number of papers which follow, but it is necessary to emphasize the linkage between domestic policies and trade, and the impact this has had on the structure of existing trade agreements as well as

the direct and indirect constraints that trade agreements are having on domestic policies.

NAFTA has left each country with a right to develop domestic agricultural policies which best suit their respective social, economic and political imperatives. However, as a practical matter, this policy freedom can be constrained by the regional trade agreement within which our respective agricultural economies operate. I have already referred to Canada's necessity to eliminate its two-price wheat policy. Another example, would be the difficulty the United States would face if it reintroduced wheat export subsidies. This would have the practical effect of sucking more wheat imports into the United States from Canada.

Growing differences in domestic support levels in one country relative to its trading partners are bound to cause trade relation problems. Demands for support parity and/or trade remedy import protection are the natural consequences of major divergencies in support levels. Over time, therefore, domestic agricultural policies in NAFTA must be on a converging course if trade frictions are to be minimized.

## CONCLUSION

When all is said and done, trade policy is a means to a domestic end. All NAFTA members share a common goal of facilitating the growth of their respective agricultural sectors. One means of achieving this goal is to negotiate improvements in the regional and multilateral trading environments. We have come a long way regionally. We still have a much longer journey to go multilaterally. However, the NAFTA Agreements demonstrate what can be achieved when countries choose to reduce trade barriers and facilitate trade. I will leave it to the papers that follow to quantify the effects. However, as an unabashed biased observer, I do not have to be convinced that NAFTA is operating to the overall benefit of agricultural producers and processors in each of the three member countries.