



Policy Briefing Paper

No. 6 December 2006

Free Trade at the Crossroads: Time For a New Approach

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The Canadian government has committed to changing its approach to trade. As a first step to developing a new approach, it needs to look back on the failed experiments of the past decade of trade negotiations. This briefing paper calls for the adoption of a rights-based approach to trade rooted in transparency, accountability and the principles of just and sustainable development.

The Canadian government has recently committed to greater transparency and parliamentary debate on all international treaties. Canada has also indicated its interest in developing a new approach to trading relations. This presents an ideal opportunity to take stock of the current dysfunctional paradigm and create a new approach for Canada's trade policy that inextricably ties our human rights commitments to trade.

The current free trade model is in crisis. The North America Free Trade Agreement (NAFTA) has proven unable to deliver on its promises. The Canada-Central America Four Free Trade Agreement (CA4FTA) has made few advances in five years. Globally, the World Trade Organization (WTO), with its inherently undemocratic structure, has spent most of its existence stalling and lurching forward and is currently in a state of near-collapse. Over a decade and a half of extensive research and experience have demonstrated that free trade has failed to "lift all boats" out of poverty. Moreover, where there has been an upsurge of economic activity, as was initially the case in Mexico under NAFTA, there are few trickle-down effects boosting or supporting the domestic economy.

The Softwood Debacle

For over a decade, the Softwood dispute has provided a stark example of the contradictions between free trade theory and practice. It is commonly accepted that Canada first entered into the Canada-US FTA and NAFTA in order to secure its niche in the American market for specific goods. Softwood Lumber was one of these goods. Yet, for over a decade the U.S. has worked to curtail Canadian softwood imports entering the U.S. Using the frameworks set out by NAFTA and the WTO, Canada has won a number of legal decisions that should have ended the dispute. Nonetheless, the U.S. continued to disregard the rulings until June 2006 when a deal between the two countries was struck.

The deal calls for the US to return 80% of the \$5 billion that they collected in "punitive" duties over the course of the dispute. Oddly, the remaining 20% or \$1 billion will go into the coffers of

US lumber companies and government. In addition, the deal itself sets out certain limits on the quantity of wood entering the US. If the price were to fall or exports into the US were to surge then an export tax or a quota would limit supply and price. In other words, the solution to the dispute is a deal **that manages – to great disadvantage to Canadian industry – trade in softwood**, rather than opening it up according to NAFTA dictates.

Not only is the deal an example of how the free-trade paradigm does not work, the actual settlement makes Canadian industry out to be the loser, allowing for a two-year settlement period. This deal demonstrates that whenever there is free trade between two unequal partners, as in our trading relationship with the US, the weaker partner will continually lose out. This recent deal contains a terminator clause for either party to end the deal while also suspending current and future litigation on the issue. Thus, the US can choose to pull out and Canada will have even fewer resources to challenge its unilateralism. The Canadian softwood industry has reluctantly agreed to go along with the deal, which received Parliamentary assent December 15, 2006.

Consistent Failures on the Bilateral Front

Trade between Canada and Central America has increased steadily since 1995 to reach \$768 million yet it totals less than one percent of Canada's trade globally.

Although it constitutes a tiny fraction of our overall exports, trade negotiations with Central America nonetheless allow Canada to think through and develop a template in its approach to negotiating bilateral trade agreements.

Since 2001 Canada has pursued secret, non-transparent negotiations of the Canada-Central America Four Free Trade Agreement (CA4FTA) that includes Guatemala, El Salvador, Nicaragua, and Honduras. These are small economy countries that have seen their share of civil strife and natural disasters. Although Canada has always responded in favour of upholding human rights and promoting development in those countries, these considerations are noticeably absent in the negotiations.

In addition to calling into question the ability to incorporate sustainable development goals, the CA4FTA also highlights the secret nature of the negotiations. Canadians have strong ties and connections to Central America and a keen interest in ensuring that Canada maintains a positive relationship yet for over 5 years the government has not released any information.

The argument that it cannot convince the four countries to release the texts is weak. In 2001 Canada led the way in persuading the 34 countries negotiating the FTAA that it was in their interest to release draft texts to the public. This was a small gesture but a step in the right direction nonetheless. Even the NAFTA dispute-settlement mechanism, while still highly problematic, should now allow for the public to observe tribunal proceedings. Moreover, other countries such as Brazil allot civil society the same opportunity to influence trade negotiations as the corporate sector and provide access to information.

While official negotiations remained stalled, a space has opened up to shift the way in which Canada approaches trade with small economy countries.

WTO Strife Illustrates Lack of Democracy

The WTO has been in trouble since the first day of its existence. Although the institution from its inception purported to demand worldwide liberalization, first in the agriculture sector, then later in services and industry, this liberalization has never happened equally. In the first ten years of the WTO, countless Southern countries were coerced into liberalizing agricultural markets while Northern countries maintained their status quo. This reality in and of itself illustrates the WTO's stark undemocratic nature despite its consensus-decision making model.

This discord has now reached new heights as the North has failed to deliver on any of its commitments in the current Doha Development Round. Most analysts now agree that Doha will fail to deliver on development commitments if negotiations go ahead. The World Bank itself has published new figures for the potential gains of the Doha Round, scaling down considerably its initial figures: "Projections of global gains from full trade liberalization dropped from \$832 billion to \$287 billion; the developing country share fell from \$539 billion to just \$90 billion."¹

UNCTAD, The Carnegie Endowment for International Peace and other World Bank studies have all reached the same conclusion calling into question the free-trade paradigm, yet the push to move forward continues.

Because of this stark reality and the deep contradictions within the WTO, Southern government negotiators have refused to move forward with negotiations until there are a variety of policy tools in place and policy space is granted to countries to allow them to choose and develop their local economies in much the same way as Northern countries have done. In a recent meeting, Director-General Pascal Lamy emphasized that "trade-openness was the best way to reduce poverty," despite the overwhelming evidence to the contrary.²

In Canada, farmers have been hit hard by liberalization commitments under both NAFTA and the WTO, with current incomes being more or less on par with incomes in the thirties. Moreover, rather than assuming a unique approach, and in the context of a stalemate, the government is fulfilling global commitments to dismantle the Canadian Wheat Board which most conclude will lead to further hardship. There are also concerns surrounding the privatization of public services.

It is clear, that our globalised world demands a multilateral trading institution but the WTO in its current format is not that institution. Rather, a multilateral trading institution needs to frame trade rules within existing global governance bodies, specifically the United Nations system. In that way, human rights would necessarily be prioritized within a structural legal entity in a rights-based approach that would then be the normative operating framework for trade negotiations.

The Time For a New Approach

During the 2006 election, the Conservative Party committed to holding parliamentary debate on all international treaties. How this happens is critical. True commitments to transparency, accountability, and democracy would ensure that parliamentary debate is preceded by a healthy public debate that enables citizens to express their views to government through various multi-stakeholder processes and to their MPs. Various experts should also provide input. These actions would contribute to an informed parliamentary debate over time, enabling parliament itself ultimately to have the opportunity to deliberate and decide on trade agreements.

Recognizing the undemocratic nature of the government's approach to free-trade negotiations, the Standing Committee on International Trade (CIIT), in September 2006, took up civil society recommendations and passed a resolution calling for the immediate release of texts, full public and parliamentary debate and further study of the human rights impacts of the CA4FTA on Central America.

In the wake of consistent free-trade failures, several governments have already taken the initiative to propose alternative trading models. Bolivia has proposed, "A People's Trade Agreement" that recognizes trade and investment as a means of development, rather than an end unto itself, and calls for complimentary economic relationships rather than competitive ones. The Bolivarian Alternative Trade Agreement developed in Venezuela links guarantees upholding human rights to trade, calling for a primary recognition of people's rights to healthcare, food, and education.

All agree that there is a viable need for a multilateral trading institution that helps regulate trading relationships globally. As a respected global leader, Canada urgently needs to adopt a rights-based framework that incorporates a vision of trade embodying its legal international human rights obligations in order to ensure that global trade upholds human rights and promotes sustainable and just development. **The time is ripe for a fresh approach. What is needed now is the political will.**

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Notes

¹ Anderson, Martin, and van der Mensbrugge, "Market and Welfare Implications of Doha Reform Scenarios." In Doha Round and Developing Countries: Will the Doha deal do more harm than good? RIS, No. 22, April 2006, www.ase.tufts.edu/gdae/Pubs/rp/DohaRIS2Apr06.pdf

² EAA & WCC Meeting with WTO Director-General Pascal Lamy, September 2006, Geneva.