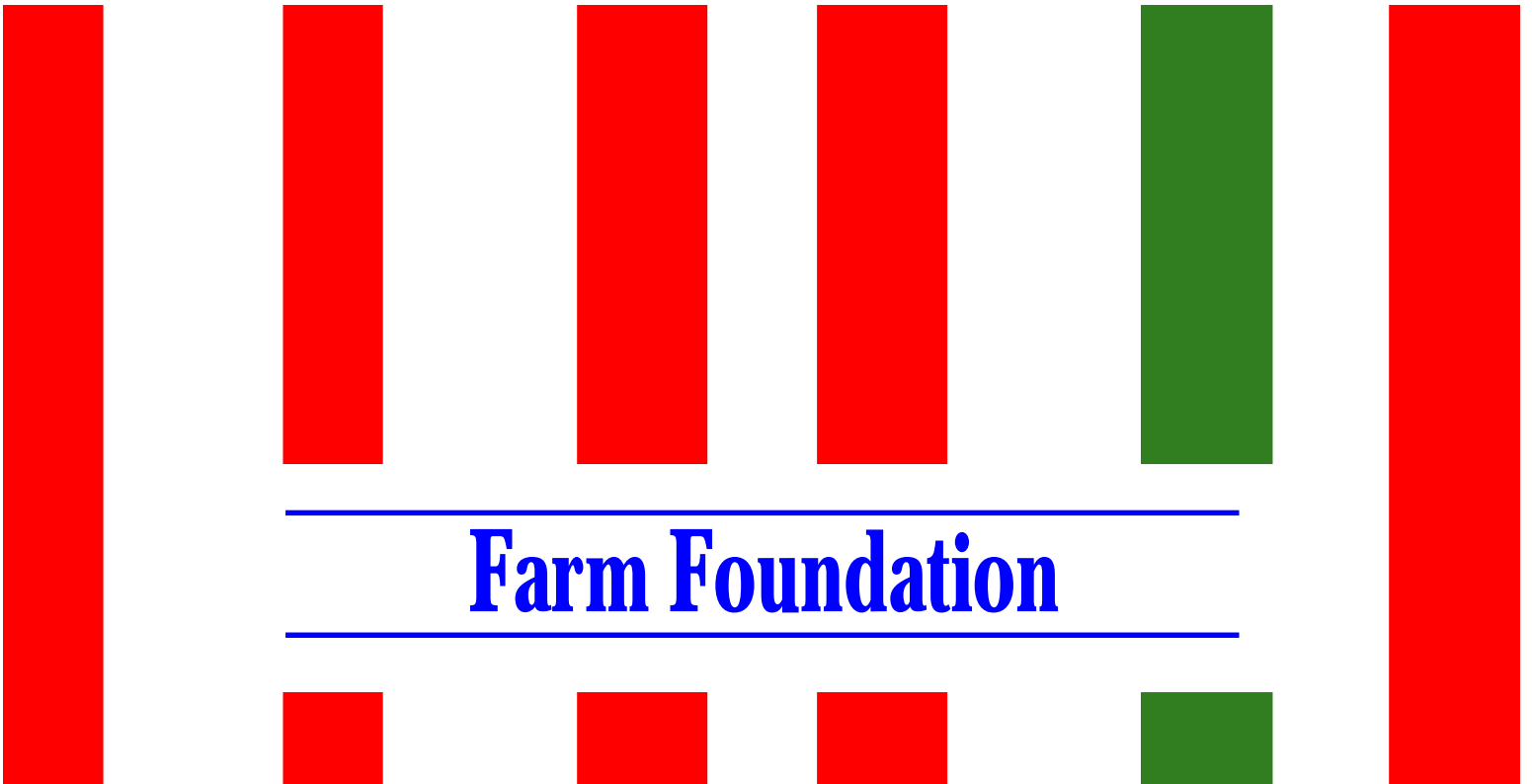


POLICY DISPUTES INFORMATION CONSORTIUM
EIGHTH AGRICULTURAL AND FOOD POLICY INFORMATION WORKSHOP

KEEPING THE BORDERS OPEN

CONCLUSIONS AND RECOMMENDATIONS



POLICY DISPUTES INFORMATION CONSORTIUM

Eighth Agricultural and Food Policy Information Workshop

Keeping the Borders Open

March 2002

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The eighth in a series of workshops organized by the Policy Disputes Information Consortium designed to produce timely, relevant economic analyses related to agricultural, food, and trade policy as a means of reducing trade tension and disputes between Canada, United States, and Mexico. This workshop provided a critical insight of the policy options on health, plant and animal protection, and food safety under the NAFTA provisions; analyzed the impact of trade remedy laws on the NAFTA region; and recommended the creation of a Policy Leadership Commission to provide support on dispute settlement, conduct policy assessment, and recommend competition policy within the trading bloc.

The photos on pages 1, 2, and 3 are courtesy of the USDA Online Photo Center (<http://www.usda.gov/oc/photo/opclibra.htm>). The photo on page 8 was taken by David P. Ernstes in the Puerto Vallarta, Mexico, vicinity.

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KEEPING THE BORDERS OPEN: CONCLUSIONS AND RECOMMENDATIONS

EXECUTIVE SUMMARY

The following represent the conclusions reached at the Eighth Policy Disputes Information Consortium Workshop. The workshop participants are members of industry, government, and academia from Canada, Mexico, and the United States. Although these conclusions represent a strong consensus, they do not necessarily represent the views of any particular individual or group represented at the Workshop.

■ **Demonstrated contributions:** NAFTA has made major positive contributions to farmers, agribusinesses, and consumers. These contributions include reductions in regulation and trade barriers; reduced prices for many food products; increased efficiency of production, processing, and distribution; increased demand for farm products; increased trade; and reduced inflation. Business and trade relations among the participants in food production, processing, and distribution have been significantly improved. NAFTA's strength relies on day-to-day working relationships, frequent ministerial contact, and effective institutions at the working level.

■ **Elements of trade and policy stress remain:** Trade risk remains one of the most significant risks facing agriculture. Despite the gains, NAFTA has neither accomplished free trade nor has it achieved an adequate level of trade harmony. Several areas not dealt with in the agreement continue to limit trade and cause stress. In particular, domestic farm policies and trade remedy laws limit the gains from trade that NAFTA could provide.



■ **Taking NAFTA to the Next Level:** In order to continue the momentum of gains and to reduce the incidence of impediments, there is need to provide NAFTA with the tools to facilitate actions that reduce policy stress and stimulate national and supranational trade and economic development. This will require new institutional arrangements within the NAFTA framework to provide leadership for making further improvements in trade relations.

■ **Speaking for North America:** A visionary leadership body that speaks for North American agriculture was proposed to be established at the supranational level within NAFTA. This body would evaluate progress in achieving NAFTA's objectives; identify and evaluate sources of trade frictions; and be an active advocate, mediator, and participant in recommending outcomes that foster benefits for North American farmers, agribusinesses, and consumers. This voice would search for mutually beneficial solutions rather than pursue the confrontational, protectionist, short-run, and nationalistic interests that continue to detract from the positive NAFTA contributions.

■ **Warning signs:** While NAFTA initially resulted in a reduction in SPS barriers, antidumping, and countervailing duty actions; recent increases are notable and concerning. These actions, more often than not, have frivolous, retaliatory, costly, and risk-increasing characteristics that seriously undermine NAFTA as an institution.



■ **National restraint:** If NAFTA's benefits are to be realized, national restraint must be exercised to avoid taking backward steps in terms of trade and trading rules that deter trade expansion and thus thwart the gains that have already been achieved. Specific concerns include the imposition or maintenance of sanitary and phytosanitary (SPS) trade barriers that are not based on science, anti-dumping (AD) actions, countervailing duties (CVD), and increased agricultural subsidies by NAFTA countries. Individual countries should always consider the economic impacts of their actions on other member countries.

■ **Agricultural uniqueness:**

Agricultural prices are determined by competitive forces of supply and demand that are subject to considerable seasonal and cyclical variation and in some cases, a high degree of perishability. Consequently, most agricultural prices periodically and predictably fall below total costs of production, a main standard for findings



of dumping. While injury may be demonstrated in such instances, it often results from normal market adjustments to relative supply or demand conditions and is likely reflected on the world market for these commodities. When no price differences can be demonstrated between the countries involved, it is a clear indicator of a competitive market. These price characteristics should be recognized when dumping cases are brought.

■ **National policy excesses:** Countervailing duty cases often result from perceptions of farm subsidies and sometimes from their reality. Subsidies usually result in lower prices to producers in other NAFTA countries and higher producer costs in the subsidizing country. The higher production costs are the result of capitalization of subsidies into the value of land and other capital assets, which increase rental rates and asset prices. Countervailing duty cases have doubtful impact on modifying subsidization policies. A more efficient and less costly means to reduce the trade distorting effects of subsidies is restraint in the use of this form of public support for agriculture, particularly subsidies extending over a number of years.

■ **Scientific basis:** Special care must be taken to assure that SPS regulations are based on scientific facts that can be replicated in research. Sound science is to be distinguished from "soft science" that is based on normative judgments on the part of the advocates and their research counterparts regarding what is good, moral, and ought to be. Such judgments need to be carefully and consistently avoided in SPS decisions.



- **Economic science:** The evidence in dumping and countervailing cases often has limited economic content. It is frequently based on evidence that runs counter to economic and business logic. Free trade, and the benefits thereof, is an economic concept. Therefore, economic science should be seriously considered in trade dispute decisions.
- **Transparency:** The NAFTA countries share an obligation for employing sound science and transparency. Sound science and transparency in policy, programs, and decision-making should enhance trade harmony among the NAFTA partners. NAFTA's integrity depends on being able to openly evaluate the impacts of its policies and those of its member countries on trade.
- **Win-win opportunities:** The following areas were identified where gains can be realized by all NAFTA countries and where the only pain involves sharing costs. The areas where the benefits can be readily realized and should be actively pursued include:
 - **Eradication programs for animal diseases and pests:** There are substantial benefits to be realized in all NAFTA countries from the eradication of diseases such as bovine tuberculosis and brucellosis; from systematic control of carriers of disease such as ticks; from control of plant diseases; and from cooperative efforts to prevent outbreaks of contagious animal diseases such as foot and mouth disease (FMD).
 - **Food safety:** Hazard analysis and critical control points (HACCP) procedures need to be implemented throughout all NAFTA countries for both crops and livestock. HACCP facilitates trade by reducing reasons for SPS barriers while protecting the health and safety of the member countries' highly mobile populations.
 - **Facilitate commerce:** Compatible grades, standards, and payment procedures are essential for trade in agricultural commodities. The US Perishable Agricultural Commodities Act (PACA) provides a useful model for implementation across NAFTA.
 - **Infrastructure:** Improved border infrastructure is an obvious area of need. Many other examples, such as the development of water quantity and quality infrastructure, are equally important.
 - **Education:** There is need for a massive education program informing concerned citizens in the three countries about the accomplishments and problem areas of NAFTA. An informed body politic can then take ownership of NAFTA.



A vertical graphic of the American flag, showing the blue field with white stars at the top and the red and white stripes below, positioned on the left side of the page.

AUTHORS' COMMENTS AND DISCUSSION IN BRIEF

HEALTH, PLANT AND ANIMAL PROTECTION, FOOD SAFETY, AND POLICY OPTIONS

***HADDOW, KERR, WAGNER, SÁNCHEZ, ORDEN, McDONALD,
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In these times of heightened concerns about health, food safety, and the spread of plant and animal diseases, there is an overriding requirement for sound science, transparency, and open communication to avoid the establishment of illegitimate SPS barriers to trade. The dangers of soft science and political protection are a very real threat to the achievement of free trade under NAFTA. Special care must be taken to separate the technical facts from the moral and political diversions.

To effectively deal with issues of health, plant and animal protection, and food safety; the three NAFTA countries must be treated as a contiguous region having a uniform policy, compatible programs, and uniformly effective implementation procedures.

Comprehensive cooperative programs must be developed to prevent the penetration of plant and animal diseases into any of the three NAFTA countries and, once introduced, to prevent their spread with the goal of eradication. The achievement of this goal will require technical assistance and cost sharing. Day-to-day cooperation is more productive than formal proceedings and litigation. In the absence of harmonization across borders, there is a need for testing, certification, and effective animal health protocols.

Opportunities should be sought to minimize the risks of disease transmission within NAFTA while allowing trade to occur. With proper safeguards, the welfare benefits from even partial trade are substantially greater than from no trade.

“ In the science of international disease control, international boundaries are artificial constructs—mere lines on a map that have no bearing on the dynamics of the disease....They should have no bearing on the management of the disease.” --William A. Kerr

“The sequential issuance of the 1997 and 2001 USDA rules to allow avocado imports from Mexico is an example of successful adoption of a systems approach to risk mitigation that is less trade distorting than a complete ban....Limited US distribution is credited with reducing all pest risk as much as 99 percent.” --David Orden

NAFTA should be designed with a primary objective of reducing trade risk. To do this, trade dispute procedures need to be predictable and transparent. Consideration needs to be given to the establishment of a set of general principles that can be used as a guide for the development, implementation, and evaluation of SPS regulations under NAFTA. Examples of such principles might include the provision for the use of a systems approach to risk reduction; provision for regionalization and equivalence; specification of the incidence of cost of implementation; and the ability of citizens (producers and consumers) to recover damages resulting from unreasonable SPS regulations.

ACCESS TO PESTICIDES

SHORT, FRESHWATER, ELAM

The ability of farmers to access and use the same set of agricultural chemicals in the three NAFTA countries has considerable impacts on trade, productivity, and costs of production per unit of output. Access has both availability and cost dimensions.

Availability issues result from differences in regulatory/licensing procedures and the fact that the same chemical may be licensed for different crops in the three NAFTA countries. While considerable progress has been made in finding ways to harmonize the registration process, it is really just the beginning, and barriers to free trade in pesticides will remain for many years.


The origin of cost/price differences is complex. Economists assume that consumers maximize utility and that firms maximize profit. Bearing this in mind and considering that there are differences in regulatory systems and costs among the three countries, price differences should logically be expected. Allowing free movement of pesticides within NAFTA would pressure the regulators to implement fully harmonized procedures in terms of chemical availability, accepted uses, permitted application rates, environmental restrictions, and public health standards. If free trade in the resulting agricultural products is to occur, this must happen.

DOMESTIC TRADE REMEDY LAWS

LEYCEGUI, MACMILLAN, GOODLOE, RAYNAULD, WAINIO, YOUNG, MEILKE, SALINAS, BARICHELLO, CALVIN, LOYNS, TOLMAN, SHWEDEL, GOODWIN, WILSON, NORMAN

Trade remedy laws encompass domestic antidumping, countervailing duty, and safeguard actions by governments. While trade remedy law actions decreased following the NAFTA agreements, in recent years they have increased and appear to have become frivolous, counterproductive, and retaliatory in nature. These actions undermine the objectives of NAFTA. As a result, policy changes must be pursued that limit their use in agriculture.

The stated goal of antidumping is to combat predatory pricing. Predatory pricing involves a firm selling below its cost of production to drive out rival firms. Antidumping actions are brought against firms that are selling in foreign countries at prices below those charged in the firms' home market with a test of whether they are selling below their full cost of production including a margin for profit. Since agricultural prices are seasonal and cyclical by nature, agricultural antidumping duties are relatively easy to obtain and tend to be large once put in place. Eliminating antidumping laws and replacing them with antitrust/competition policy has merit, espe-



“One way to resolve the issue (of price and regulatory differences) would be to allow farmers to import pesticides for their own use from other NAFTA countries providing they followed the label direction on use. (This)...would pressure...fully harmonized regulatory procedures....” --Cameron Short and David Freshwater.

“It is difficult to make the general case for antidumping measures and perhaps impossible within a free trade area. In essence, firms are punished for taking actions in foreign markets that are normal practice in the domestic market.” --Linda Young, John Wainio, and Karl Meilke



cially since the application of antidumping laws appears to have less and less to do with unfair trade practices.

A countervailing duty action is brought by domestic producers against foreign producers who allegedly benefit from government subsidies. The result of the subsidy is a market distortion, which the countervailing duty is designed to remedy. Alternatively, the duty is designed to convince the offending country to remove its subsidizing policy.

Safeguard measures, allowing a suspension of duty reductions or an increase in duties for up to three years, were designed to protect against import surges following trade concessions and, thereby, to allow the industry to adjust and invest in technology leading to competitiveness. However, there is a clear danger that safeguards may be used as a protectionist measure. An agency within NAFTA to weed out countervailing duty cases with little or no merit would be helpful.

The case studies involving corn, tomatoes, sweeteners, and wheat revealed the following cogent conclusions:

- The economic foundations for antidumping regulations are weak overall and even weaker in agriculture. If prices are basically the same in both countries, how can there be dumping?
- Differences in policy mechanisms among the three countries inherently create problems with which trade remedy laws are not equipped to deal.
- Pressures for reconciliation will increase in the future if and when the Free Trade Agreement for the Americas is consummated.

In light of the basic conclusion that the current application of trade remedy laws to agriculture is counterproductive, the following policy options were discussed:

- Strengthen the economic requirements for findings of antidumping and for imposing countervailing duties and safeguard measures.

“...Neither safeguards nor antidumping actions are useful tools for restoring competitiveness.” --Carol Goodloe

“NAFTA parties should continue negotiating multilaterally on pending issues in order to further discipline the application of trade remedies, reducing the discretionality that is still present in trade remedy investigations.” --Beatriz Leycegui

“In economic terms, trade remedy laws do not fit the problem, and their application is not contributing to more even terms of trade. They are costly, they are divisive, and there is not much evidence that they effectively resolve trade and policy differences.” --R.M.A. Loyns

- Require consultation among/between countries before initiation of legal action.
- Eliminate antidumping actions within NAFTA or at least within agriculture as inappropriate for a free trade area.
- Require neutral third party mediation/dispute resolution procedures.

It was concluded that any of these policy options would be better than the current system.

OVERALL ANALYSIS, CONCLUSIONS, AND OPTIONS
CARTER, KNUTSON, LOYNS, JONES, KEENAN, CONKLIN

There is an overriding need to develop mechanisms that ensure against the use of sanitary and phytosanitary regulation and trade remedy laws for protectionist purposes. While NAFTA has made positive contributions, many problems remain which require policy and institutional change to move NAFTA to the next level.

It was agreed that greater leadership is required from within NAFTA to harmonize domestic policies. This requires greater initiative by the NAFTA Secretariat. A proposal for accomplishing this objective would involve the formation of a Policy Leadership Commission (PLC) within the NAFTA Secretariat.

The PLC would:

- Be a clearinghouse for information, data, and analysis.
- Be a first referral point for dispute settlement, including negotiation and mediation.
- Conduct policy and program assessments out of which proposals for the next steps in NAFTA development would be made.
- Develop recommendations for competition policy.

General public education about NAFTA seems to have stopped as soon as NAFTA was approved by the member countries. There should be a continuing effort to inform concerned citizens in the three countries about the realities (accomplishments as well as problem areas) of NAFTA, so that the people can claim/take ownership of NAFTA.

“If there are to be positive and progressive next steps in the NAFTA process, there must be a Secretariat that is constantly pushing and monitoring progress.” --2001 Executive Summary

“While progress under NAFTA has been very positive, a higher level of assertiveness is needed to harmonize country policies. This could be provided by the suggested Policy Leadership Commission or similar institution within the NAFTA Secretariat” --Jeffrey Jones





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