

Issues for the Future

I am not going to say that everything has gone well. Some of the issues which very well may end up on this year's Bi-National Commission agenda for the U.S. include: the TCK disease issue for U.S. wheat; allegations of heavy metals residues in meat; and the dumping cases against U.S. hogs and U.S. cattle and beef.

In conclusion, the level of communication and cooperation that USDA has with our counterparts in Mexico has made a noticeable difference in the quantity and quality of trade which the U.S. has with Mexico.

AGRICULTURE AND AGRI-FOOD CANADA

Ken Ash and Glyn Chancey

There are four basic assumptions which underlie our view concerning informal approaches to dispute resolution:

- The most effective way to resolve disputes is to avoid them.
- Most disputes are a result of misinformation and misunderstanding.
- Even with perfect information, disputes inevitably arise.
- When disputes do occur, pre-established third party processes are essential to dispute resolution.

The Role of Information

As a government agency, much of the data and information that we have available sometimes conflict with established government policy. The first reality of being an information generator in a government bureaucracy is that there exists an institutional disincentive to being transparent. This disincentive can be minimized. In Canada, we have clear rules established with our Minister about what is produced and what is released. The Minister is quite comfortable with the facts of a situation being available, as long as the facts are correct. This includes forecasts and any other anticipatory information. Two simple examples illustrate the importance of information to achieve collaboration and avoid conflict.

We have found that simply telling people what is happening is a prerequisite to effective collaboration. Two years ago, AAFC produced a multi-year research work program. We wrote down what analysis we intended to do for the next two years, described it very briefly, and noted when we thought that the resulting information would be available. AAFC published this work plan and put it on the internet. This simple action is based on common sense, but not enough of this form of

communication occurs. The result was creation of demand for information on our work that far exceeded any of our expectations. We have dramatically increased the amount of collaboration we were able to accomplish with other government and non-government researchers, we have generated very early interest across the sector in some of our analysis, and we have demystified our analytical priorities and interests inside and outside the department.

The second example involves relations among the provinces, and between the federal government and the provinces. Agriculture is a constitutionally shared jurisdiction in Canada. In the mid-1980s, there was ongoing debate about the nature and level of support to the red meats industry provided by the 11 governments. After considerable difficulty, rules of the game with respect to program design were established, and an independent monitoring committee (of mainly academics) was set up whose job it was to take data from 11 governments, develop and apply appropriate methodologies, and estimate support levels and expected impacts of all of the various programs in the red meats industry. This information was regularly published. This effort went a considerable distance toward demystifying what had been largely misperceptions about who benefitted most from various government programs, and it contributed substantially to much more sensible policy than would have been the case without the process.

A Model for TriNational Dispute Resolution

As noted, information alone will not resolve or help avoid all disputes. Some recent efforts by Canada, the United States and Mexico have attempted to create a trinational organization to facilitate the resolution of private commercial disputes in the fruit and vegetable sectors. It is an interesting case example.

While the United States has an apparently effective mandatory licensing and arbitration system for domestic fruit and vegetable commerce, Mexico has no such national system. Canada has a licensing and arbitration system but it appears deficient (relative to the U.S. system) in providing protection against non-payment.

In 1997, the NAFTA Committee on Agricultural Trade established an Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods. The mandate given the Advisory Committee was to develop systems in all three countries that would facilitate efficient resolution of private commercial disputes involving trade in agricultural products. It was subsequently agreed that priority would be given to establishing a system for fresh fruit and vegetable trade.

From the outset of the Committee's work there was significant government and industry trepidation over the complexity of their task. But there was even more interest in improving the efficiency and integrity of the whole North American market, particularly given the scope for the parties to achieve their respective domestic institutional and market development objectives in the process. This shared commitment was a necessary first step towards establishing a new trinational dispute resolution mechanism.

A highly iterative process of consultations with industry in each country was undertaken, on the basis of a set of broad principles for the development of a trinational model. In the process, draft discussion papers were prepared and reviewed with industry.

At present, a trinational corporation is proposed, with voluntary membership open to all interested individuals and organizations. The corporation would have two primary functions.

- Policy and standard setting – which would include setting standards for membership, de-listing and re-listing, for appropriate trading practices, and for inspection, mediation and arbitration. Actual inspection services would reside outside the corporation.
- Dispute resolution – which would include managing a mediation and binding arbitration service and facilitating enforcement of arbitration and arbitral decisions in contract disputes; through the inclusion of binding provisions in membership contracts ensuring linkages to the relevant international agreements (ex, the New York Convention) and national laws and regulations governing the use of arbitration in contract disputes.

The desired outcome, of course, is a tri-national system that strengthens and adds value to national systems, by providing the North American produce industry with the tri-national policies, standards and services necessary for resolving contractual and quality disputes in a timely and effective manner. Further consultations are planned, with a target start-up date of February 2000.

The benefits of this model could be significant. It could reduce the risk of non or incomplete payment to sellers of fruits and vegetables, as long as they deal with other members of the trinational organization. It could make possible mandatory mediation and arbitration of non-payment and other contractual disputes. It could address a growing problem of perception among foreign suppliers that, for example, the Canadian market is a risky “last resort market”. It could increase trade flows and returns to producers and shippers in all three countries. In the process it could build goodwill and mutual understanding and quite possibly contribute to dispute avoidance in other areas of fruit and vegetable trade.

Some important lessons on trinational cooperation and dispute resolution have been learned over the past two years.

- A strong vision of mutual goals and interests is needed.
- Participation of the relevant people, with the ability to deliver on commitments, is needed.
- National identities need to be de-emphasized, and a greater focus given to universally acceptable values and objectives. (In this case the desire of all business people to get paid for what they sell, irrespective of where they sell it).

In the absence of “global governments”, the role of information, mutual understanding and innovative transnational organizations that ensure fair and transparent “rules of the game” are important. They might become even more so.

SAGAR

Andrés Casco

Agricultural Policy

The bi-national commissions with the United States and Canada, have allowed Mexico to move forward with its agenda in agricultural policy. One issue which Mexico had with Canada was over potatoes. With communication and cooperation, we were able to move ahead.

My view is that we need to make the trade representatives more independent, autonomous and decentralized from central governments. Trade representatives respond to political pressures. If we move to make trade representatives more independent, the number of dumping cases will diminish. The barriers to making cases will be much higher because of the greater analytical basis.

I believe that there is much to do to improve trade laws. The trade laws in Mexico are like a mirror of the trade laws in the United States. Mexican trade laws need to be moved toward the WTO Plus standard. In the case of agricultural products, Mexican trade laws are useless. It is very hard to make a case using our standards, which basically reflect industry standards.

Third party international organizations have been very useful in reducing trade tensions. These organizations contributed to helping us identify rules and regulations based on scientific criteria. That has helped move forward the agenda.

Private Sector Issues

Mexico has not had an institutional framework to help the private sector settle disputes until recently. Unfortunately, we did not move in a comprehensive way, but tried to move to fill the spaces which were left after structural reforms. As the structural reforms have moved forward, SAGAR has begun mediating disputes. We formed COMPROMEX (The Commission for Protection of External Trade) a private corporation which is run by our import/export bank. It helps to design contracts and helps mediate disputes for commercial domestic contracts and in international situations as well. For example, if someone goes to COMPROMEX and brings a third party from another country, in the contract, they can designate COMPROMEX as the mediator.