

SANITARY AND PHYTOSANITARY MEASURES IN NAFTA

INTRODUCTION

THANK YOU VERY MUCH FOR INVITING ME TO PARTICIPATE IN THIS MEETING TO DISCUSS CANADA'S EXPERIENCE IN IMPLEMENTING THE SANITARY AND PHYTOSANITARY (SPS) PROVISIONS OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA).

THE NAFTA HAS BEEN A MAJOR SUCCESS STORY FOR CANADA SINCE ITS ENTRY INTO FORCE ON JANUARY 1, 1994. CANADA'S TRADE IN MERCHANDISE WITH ITS NAFTA PARTNERS HAS ALMOST DOUBLED SINCE 1994, REACHING 573.4 BILLION CANADIAN DOLLARS (C\$) IN 2004. (A CANADIAN DOLLAR IS CURRENTLY WORTH ABOUT 80 U.S. CENTS.) CANADIAN PRODUCERS ARE BETTER ABLE TO REALIZE THEIR FULL POTENTIAL BY OPERATING IN A LARGER, MORE INTEGRATED AND EFFICIENT NORTH AMERICAN ECONOMY. THIS ENHANCED ECONOMIC ACTIVITY AND PRODUCTION IN THE NAFTA REGION HAS CONTRIBUTED TO THE CREATION OF MORE AND BETTER PAYING JOBS FOR CANADIANS.

UNDER NAFTA, CANADA HAS CONSOLIDATED ITS POSITION AS THE LARGEST MERCHANDISE TRADING PARTNER OF THE UNITED STATES. CANADIAN MERCHANDISE EXPORTS TO THE U.S. GREW AT A COMPOUND ANNUAL RATE OF 8.5% BETWEEN 1990 AND 2004. CANADA'S BILATERAL TRADE WITH MEXICO REACHED C\$16.4 BILLION IN 2004, MAKING MEXICO CANADA'S FIFTH LARGEST EXPORT MARKET AND THIRD LARGEST SOURCE OF IMPORTS. OUR NAFTA PARTNERS NOW ACCOUNT FOR MORE THAN 85% OF CANADA'S TOTAL MERCHANDISE EXPORTS.

TRADE IN AGRICULTURAL PRODUCTS HAS SEEN SIMILAR GROWTH. FROM 1993 TO 2003 THREE WAY TRADE IN AGRICULTURAL PRODUCTS ALMOST DOUBLED. CANADA'S AGRICULTURAL EXPORTS TO THE UNITED

STATES MORE THAN DOUBLED (+110%) TO MORE THAN C\$25 BILLION WHILE THOSE TO MEXICO MORE THAN TRIPLED (+210%) TO MORE THAN C\$700 MILLION BY 2003. THIS DRAMATIC GROWTH, WHICH HAS BEEN MUCH MORE RAPID THAN THE GROWTH IN AGRICULTURAL EXPORTS TO COUNTRIES OUTSIDE NORTH AMERICA, HAS LED TO CHANGES IN TRADING PATTERNS BETWEEN THE PARTNERS, AND HAS RESULTED IN A MORE INTEGRATED AND EFFICIENT NORTH AMERICAN MARKETPLACE.

SINCE 1993, CANADA'S AGRICULTURAL TRADE SURPLUS WITH THE UNITED STATES HAS MORE THAN TRIPLED AND CANADA'S AGRICULTURAL TRADE SURPLUS WITH MEXICO HAS INCREASED BY NEARLY FIVE TIMES.

I HAVE MENTIONED THESE AGGREGATE TRADE NUMBERS TO DEMONSTRATE THE SIZE OF THE NAFTA TRADING RELATIONSHIP AND NOTE THAT THE VAST MAJORITY OF THIS TRADE OCCURS WITHOUT ANY PROBLEM. THE PRODUCTS FOR WHICH THERE ARE TRADE IRRITANTS OR PROBLEMS REPRESENT ONLY A VERY SMALL PROPORTION OF THE OVERALL TRADE THAT OCCURS BETWEEN THE THREE NAFTA PARTNERS.

WHAT ARE THE NAFTA SPS PROVISIONS?

THE SUBSTANCE OF THE NAFTA PROVISIONS FOR SPS MEASURES CLOSELY RESEMBLES THE SUBSTANCE OF THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES. EACH OF THE THREE NAFTA PARTIES RETAIN THEIR RIGHTS TO IMPLEMENT AND MAINTAIN SPS MEASURES REQUIRED TO PROTECT HUMAN, ANIMAL OR PLANT LIFE OR HEALTH, INCLUDING MEASURES MORE STRINGENT THAN INTERNATIONAL STANDARDS SUBJECT TO CERTAIN AGREED RULES. EACH PARTY ALSO

RETAINS THE RIGHT TO ESTABLISH ITS APPROPRIATE LEVEL OF PROTECTION.

THE OBLIGATIONS INCLUDE BASING SPS MEASURES ON SCIENTIFIC PRINCIPLES, TAKING INTO ACCOUNT GEOGRAPHIC CONDITIONS, NOT MAINTAINING SUCH MEASURES WHEN THERE IS NO LONGER A SCIENTIFIC BASIS FOR THE MEASURE, AND BASING MEASURES ON A RISK ASSESSMENT APPROPRIATE TO THE CIRCUMSTANCES. THERE IS ALSO A NON-DISCRIMINATION OBLIGATION WHERE IDENTICAL OR SIMILAR CONDITIONS PREVAIL.

AS WITH THE WTO AGREEMENT, THE PARTIES AGREED TO USE INTERNATIONAL STANDARDS WHEREVER APPROPRIATE AND ANY MEASURE BASED ON AN INTERNATIONAL STANDARD IS PRESUMED TO BE CONSISTENT WITH THAT PARTY'S BASIC RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT. IN ADDITION, THE PARTIES AGREED TO PARTICIPATE AND WORK TOGETHER IN THE RELEVANT INTERNATIONAL AND REGIONAL FORA TO DEVELOP INTERNATIONAL STANDARDS, GUIDELINES AND RECOMMENDATIONS.

THE PARTIES ALSO AGREED THAT THEY WOULD PURSUE EQUIVALENCE TO THE GREATEST EXTENT PRACTICABLE AS A MEANS OF REDUCING OR MINIMIZING ANY ADVERSE TRADE IMPACTS OF SPS MEASURES. THE SPS PROVISIONS ALSO CONTAIN TRANSPARENCY OBLIGATIONS REGARDING THE NOTIFICATION, PUBLICATION AND PROVISION OF INFORMATION ABOUT SPS MEASURES AND THE ESTABLISHMENT OF INQUIRY POINTS BY EACH PARTY.

THE NAFTA ALSO ESTABLISHED A COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES TO OVERSEE IMPLEMENTATION OF THE SPS PROVISIONS AND PROMOTE TECHNICAL COOPERATION BETWEEN THE

THREE PARTIES. THIS COMMITTEE HAS ESTABLISHED NINE TECHNICAL WORKING GROUPS TO DEAL WITH SPECIFIC SETS OF ISSUES.

FOUR OF THESE TECHNICAL WORKING GROUPS HAVE SUSPENDED THEIR OPERATIONS BECAUSE THEY HAVE NO FURTHER SPECIFIC ISSUES TO DEAL WITH AT THIS TIME. THESE ARE THE TECHNICAL WORKING GROUPS DEALING WITH

- DAIRY, FRUIT, VEGETABLES AND PROCESSED FOODS;
- VETERINARY DRUGS AND FEEDS;
- FOOD ADDITIVES AND CONTAMINANTS; AND
- FISH AND FISH PRODUCTS.

THE TECHNICAL WORKING GROUPS STILL ACTIVELY WORKING ARE THOSE DEALING WITH:

- FOOD PACKAGING, LABELLING AND FOOD STANDARDS;
- PLANT HEALTH;
- PESTICIDES;
- ANIMAL HEALTH; AND
- MEAT, POULTRY AND EGG INSPECTION.

WHEN SPS PROBLEMS ARISE, THERE ARE PROVISIONS FOR TECHNICAL CONSULTATIONS TO TRY TO RESOLVE THE PROBLEM WITH THE POSSIBILITY OF OBTAINING ASSISTANCE FROM INDEPENDENT SCIENTIFIC EXPERTS. THE MATTER CAN BE BROUGHT TO THE SPS COMMITTEE AND, IF NECESSARY, THE MATTER CAN BE SUBJECT TO THE NORMAL NAFTA DISPUTE SETTLEMENT MECHANISMS WHICH MAY RESULT IN A BINDING RULING BY A BI-NATIONAL PANEL. THE PARTIES CAN ALSO MAKE USE OF THE WTO DISPUTE SETTLEMENT MECHANISMS IF THEY FEEL THAT THIS SYSTEM WOULD BE MORE APPROPRIATE FOR A PARTICULAR PROBLEM. IN ADDITION TO THESE INTER-GOVERNMENTAL CONSULTATION AND DISPUTE SETTLEMENT PROVISIONS, THE THREE PARTIES AND INDUSTRY REPRESENTATIVES FROM THE THREE COUNTRIES HAVE ESTABLISHED AN INDEPENDENT DISPUTE RESOLUTION

CORPORATION WHICH CAN RULE ON CERTAIN PRIVATE MATTERS SUCH AS GRADING OR PAYMENT DISPUTES.

IN SUMMARY, THESE PROVISIONS PROVIDE A SCIENCE AND RULES BASED FRAMEWORK WITHIN WHICH THE THREE GOVERNMENTS CAN MANAGE AND RESOLVE SPS ISSUES.

PRACTICAL IMPLEMENTATION

SO, WHAT HAS HAPPENED IN PRACTICE? WHAT IS THE EXPERIENCE TO DATE IN IMPLEMENTING THESE SPS PROVISIONS?

DESPITE THE FACT THAT THERE HAVE BEEN SEVERAL IMPORTANT SPS ISSUES WHICH HAD TO BE DEALT WITH, IN PRACTICE, THE EXPERIENCE TO DATE HAS BEEN VERY POSITIVE. SO FAR, NO SPS ISSUE HAS CAUSED ANY OF THE PARTIES TO MAKE USE OF THE OFFICIAL NAFTA DISPUTE SETTLEMENT MECHANISMS. ALL SPS ISSUES SO FAR HAVE BEEN DEALT WITH THROUGH CONSULTATION AND COOPERATION IN A MANNER WHICH AVOIDED THE NEED FOR FORMAL DISPUTE SETTLEMENT PROCEDURES.

FROM A CANADIAN PERSPECTIVE, SOME OF THE MORE IMPORTANT ISSUES WHICH HAVE HAD TO BE DEALT WITH INCLUDE CONDITIONS FOR ACCESS TO MEXICO FOR CANADIAN SEED POTATOES, AN OUTBREAK OF KARNAL BUNT IN WHEAT IN THE STATE OF ARIZONA IN THE UNITED STATES, AN OUTBREAK OF POTATO WART IN THE PROVINCE OF PRINCE EDWARD ISLAND IN CANADA, THE UNITED STATES "HOLD AND TEST" REQUIREMENTS FOR IMPORTED FRESH FRUITS AND VEGETABLES, AND THE ONGOING PROBLEMS AS A RESULT OF ISOLATED CASES IN BOTH CANADA AND THE U.S. OF BOVINE SPONGIFORM ENCEPHALOPATHY, MORE COMMONLY KNOWN AS "BSE" OR "MAD COW DISEASE".

MEXICAN SEED POTATO REQUIREMENTS: FOR SEVERAL YEARS, TECHNICAL EXPERTS FROM CANADA AND MEXICO HAVE BEEN WORKING TOGETHER TO DEVELOP ANNUAL WORKPLANS ESTABLISHING THE SCIENTIFIC REQUIRMENTS FOR IMPORTS INTO MEXICO OF SEED POTATOES FROM ALL REGIONS OF CANADA TO ENSURE THAT THERE IS NO TRANSMISSION OF ANY POTATO PESTS OR DISEASES OF CONCERN TO MEXICO. THE MOST RECENT WORKPLAN HAS RESULTED IN THE CREATION OF A PRE-CLEARANCE PROGRAM JOINTLY DELIVERED BY CANADIAN AND MEXICAN INSPECTION SERVICES. IT IS EXPECTED THAT THIS NEW JOINT PROGRAM WILL PREVENT ANY REPETITION OF PROBLEMS WHICH HAVE OCCURRED IN SOME PREVIOUS YEARS.

KARNAL BUNT: FOLLOWING IDENTIFICATION OF KARNAL BUNT IN WHEAT GROWN IN ARIZONA, CANADA TEMPORARILY BANNED IMPORTS OF WHEAT FROM THE UNITED STATES. AFTER BILATERAL CONSULTATIONS AMONG THE RELEVANT EXPERTS, THIS BAN WAS PROGRESSIVELY REMOVED ON A STATE BY STATE BASIS AS USDA ANNUAL SURVEYS DEMONSTRATED THAT THIS INFESTATION WAS SUCCESSFULLY LIMITED TO ONLY ARIZONA AND A FEW OTHER STATES IN CLOSE PROXIMITY.

POTATO WART: THE DISCOVERY OF POTATO WART ON ONE FARM IN PRINCE EDWARD ISLAND IN 2000 CAUSED THE U.S. TO TEMPORARILY BAN POTATO IMPORTS FROM THIS PROVINCE. DESPITE SOME DELAYS, CAUSED PARTLY BY THE U.S. PRESIDENTIAL ELECTION THAT YEAR, TECHNICAL DISCUSSIONS BY THE RELEVANT CANADIAN AND U.S. EXPERTS RESULTED IN THE PROGRESSIVE REMOVAL OF THE U.S. RESTRICTIONS AS THE CANADIAN FOOD INSPECTION AGENCY WAS ABLE TO DEMONSTRATE THAT THE OUTBREAK WAS ISOLATED TO THE ONE FARM AND WAS UNDER EFFECTIVE QUARANTINE CONTROL.

HOLD AND TEST: THE U.S FOOD AND DRUG ADMINISTRATION REGULARLY HOLDS IMPORTED AGRI-FOOD SHIPMENTS FROM BEING DELIVERED TO THEIR FINAL U.S. DESTINATION PENDING RESULTS OF LABORATORY TESTING FOR COMPLIANCE WITH U.S. FOOD LAWS AND REGULATIONS. THIS “HOLD AND TEST” PROCEDURE CAN BE VERY DISRUPTIVE TO TRADE AND CAN BE PROHIBITIVE FOR HIGHLY PERISHABLE FRESH FRUITS AND VEGETABLES. IN 2000 CANADIAN AND U.S. OFFICIALS BEGAN A COOPERATIVE PROGRAM TO FURTHER ENHANCE FOOD SAFETY IN A MANNER WHICH RECOGNIZES THE TWO COUNTRIES SHARED FOOD SAFETY POLICIES AS WELL AS THEIR INCREASINGLY INTEGRATED MARKET FOR AGRICULTURAL PRODUCTS. THIS NEW APPROACH HAS REPLACED THE “HOLD AND TEST” REQUIREMENT FOR FRESH FRUITS AND VEGETABLES IMPORTED INTO THE U.S. FROM CANADA.

BSE: FOLLOWING THE IDENTIFICATION OF CANADA’S FIRST CASE OF BSE IN ALBERTA IN MAY OF 2003, THE U.S. AND MEXICO (AND MANY OTHER COUNTRIES) CLOSED THEIR BORDERS TO BEEF AND LIVE CATTLE FROM CANADA. THESE U.S. AND MEXICAN BANS HAVE BEEN PARTIALLY REMOVED AS CANADA WAS ABLE TO DEMONSTRATE THAT THIS AND TWO SUBSEQUENT CASES WERE ISOLATED INCIDENTS WHICH DID NOT POSE ANY THREAT TO HUMANS OR ANIMALS IN CANADA OR OTHER COUNTRIES.

ON MARCH 29, 2005, OFFICIALS FROM CANADA, MEXICO AND THE UNITED STATES AGREED ON A HARMONIZED NORTH AMERICAN IMPORT STANDARD FOR BSE REFLECTING CURRENT GUIDELINES AND PROPOSED AMENDMENTS TO THE ANIMAL HEALTH CODE OF THE WORLD ORGANIZATION FOR ANIMAL HEALTH (OIE).

THE PROGRESSIVE REMOVAL OF THESE RESTRICTIONS BY THE UNITED STATES HAS BEEN STALLED RECENTLY BY A COURT INJUNCTION HALTING THE IMPLEMENTATION OF A PROPOSED USDA RULE. USDA IS APPEALING THIS INJUNCTION AND THE ISSUE IS STILL BEFORE THE U.S. COURTS. THIS IS A VERY IMPORTANT CASE WHICH HAS THE POTENTIAL TO DETERMINE THE EXTENT TO WHICH THE SCIENTIFIC BASIS FOR AN SPS MEASURE CAN BE OVER-RULED BY COURT PROCEEDINGS UNDER THE U.S. DOMESTIC LEGAL SYSTEM.

IT IS UNCERTAIN WHAT EFFECT THE CONFIRMATION LAST WEEK OF THE FIRST CASE OF BSE IN A UNITED STATES BORN COW WILL HAVE ON THIS ISSUE. IT IS ESTIMATED THAT THESE CONTINUING RESTRICTIONS HAVE COST CANADIAN CATTLE AND BEEF PRODUCERS ABOUT C\$7 BILLION IN LOST REVENUE DURING THE PAST TWO YEARS.

NEW DIRECTIONS

ON MARCH 23, 2005, PRIME MINISTER MARTIN, PRESIDENT BUSH AND PRESIDENT FOX ANNOUNCED THE SECURITY AND PROSPERITY PARTNERSHIP OF NORTH AMERICA. THEY INSTRUCTED MINISTERS TO CREATE AN ARCHITECTURE WHICH WOULD FURTHER ENHANCE THE SECURITY OF NORTH AMERICA WHILE AT THE SAME TIME PROMOTE THE ECONOMIC WELL-BEING OF NORTH AMERICAN CITIZENS AND POSITION NORTH AMERICA TO FACE AND MEET FUTURE CHALLENGES. THEY ASKED MINISTERS TO REPORT BACK WITH WORK PLANS WITHIN 90 DAYS. THE MINISTERS PROVIDED THEIR REPORT TWO DAYS AGO ON JUNE 27, 2005.

IN CARRYING OUT THESE INSTRUCTIONS THE RELEVANT MINISTERS ESTABLISHED WORKING GROUPS, HELD ROUNDTABLES WITH STAKEHOLDERS, MEETINGS WITH BUSINESS GROUPS AND BRIEFING SESSIONS WITH LEGISLATURES. THE RESULT IS A DETAILED SERIES OF

ACTIONS AND RECOMMENDATIONS DESIGNED TO INCREASE THE COMPETITIVENESS OF NORTH AMERICA AND THE SECURITY OF NORTH AMERICANS.

TWO OF THESE CONCRETE INITIATIVES ARE DIRECTLY RELEVANT TO SANITARY AND PHYTOSANITARY MEASURES. ONE IS TO ENHANCE FOOD SAFETY AND FACILITATE TRADE IN FOOD AND AGRICULTURE PRODUCTS AND THE OTHER IS TO DEVELOP AND IMPLEMENT A NORTH AMERICAN BIOPROTECTION STRATEGY TO ASSESS, PREVENT, PROTECT, DETECT AND RESPOND TO INTENTIONAL AS WELL AS APPLICABLE NATURALLY OCCURRING THREATS TO PUBLIC HEALTH AND THE FOOD AND AGRICULTURE SYSTEM.

THE INITIATIVE TO ENHANCE FOOD SAFETY AND FACILITATE TRADE IN FOOD AND AGRICULTURE PRODUCTS CONTAINS SEVERAL COMPONENTS INCLUDING:

- (1) TO ESTABLISH OR IDENTIFY A NORTH AMERICAN FOOD SAFETY COORDINATING MECHANISM;
- (2) SPEED UP THE IDENTIFICATION, MANAGEMENT AND RECOVERY FROM FOOD SAFETY, ANIMAL AND PLANT DISEASE HAZARDS ON A NORTH AMERICAN BASIS;
- (3) WORK TO RESOLVE DIFFERENCES IN PESTICIDE MAXIMUM RESIDUE LIMITS THAT MAY BE BARRIERS TO TRADE AND UNDERTAKE JOINT REVIEWS OF PESTICIDE REGISTRATIONS;
- (4) ENHANCE CAPACITY BY LEVERAGING EXPERTISE AND TECHNOLOGY BY WORKING COOPERATIVELY WITHIN THE ESTABLISHED NORTH AMERICAN FOREIGN ANIMAL DISEASE LABORATORY NETWORK TO IDENTIFY METHODOLOGIES AND RECOGNIZE EQUIVALENT DIAGNOSTIC PERFORMANCE AND IDENTIFICATION METHODOLOGIES FOR SELECT ANIMAL DISEASES, SUCH AS BSE AND AVIAN INFLUENZA;

- (5) ENHANCE CAPACITY BY LEVERAGING EXPERTISE AND TECHNOLOGY THROUGH THE ESTABLISHMENT OF A PLANT HEALTH LABORATORY NETWORK TO IDENTIFY EQUIVALENT METHODOLOGIES FOR THE DETECTION AND IDENTIFICATION, SURVEILLANCE AND RISK ASSESSMENT OF PLANT DISEASES AND PESTS;
- (6) IDENTIFY THE APPROPRIATE GROUP OR VEHICLE TO FACILITATE THE IMPLEMENTATION OF FOOD SAFETY LABORATORY INITIATIVES; AND
- (7) CONTINUE TO SUPPORT THE COOPERATIVE EFFORT WITHIN THE NORTH AMERICAN BIOTECHNOLOGY INITIATIVE FOR THE INITIATION, COORDINATION AND PRIORITAZION OF VARIOUS BIOTECH ACTIVITIES.

UNDER EACH OF THESE SEVEN COMPONENTS THERE ARE CONCRETE WORK PLANS WITH KEY MILESTONES RANGING FROM JUNE THIS YEAR TO MARCH OF 2009.

THE INITIATIVES FOR A BIOPROTECTION STRATEGY INCLUDE:

- (1) UNDERTAKING JOINT THREAT AND VULNERABILITY ASSESSMENTS AND JOINT EXERCISES WITHIN THE PUBLIC HEALTH AND THE FOOD AND AGRICULTURE SYSTEMS;
- (2) DRAFTING AND SIGNING PROTOCOLS FOR MUTUAL ASSISTANCE AND COORDINATION IN A CROSS-BORDER EMERGENCY;
- (3) SHARING STRATEGIES FOR THE STOCKPILING AND DISTRIBUTION OF HUMAN AND ANIMAL COUNTERMEASURES;
- (4) WORKING IN A COORDINATED FASHION TO IMPLEMENT A REGIME TO IDENTIFY, ASSESS AND MITIGATE THE RISK OF INTENTIONAL THREATS TO ANIMALS, PLANTS AND FOOD PRODUCTS INTO AND WITHIN NORTH AMERICA;

- (5) DEVELOPING INFORMATION-SHARING AGREEMENTS ON ENFORCEMENT ACTIVITIES AND EMERGENCIES;
- (6) ENHANCING HUMAN, ANIMAL, AND PLANT SURVEILLANCE BY DEVELOPING INTEROPERABLE SYSTEMS TO RAPIDLY DETECT AND MONITOR INFECTIOUS DISEASES IN THESE POPULATIONS; AND
- (7) ENHANCING PUBLIC HEALTH SURVEILLANCE RESEARCH BY LINKING PUBLIC HEALTH LABORATORIES WITHIN NORTH AMERICA AND WITH FOOD AND AGRICULTURE LABORATORY NETWORKS.

THE CONCRETE WORKPLANS FOR THESE SEVEN INITIATIVES HAVE KEY MILESTONES RANGING FROM 6 TO 30 MONTHS FROM NOW.

AS A RESULT OF THESE VERY AMBITIOUS INITIATIVES, IT SEEMS CLEAR THAT NAFTA COOPERATION AND INTEGRATION TO DEAL WITH SANITARY AND PHYTOSANITARY MEASURES IS GOING TO GO WELL BEYOND WHAT CURRENTLY EXISTS AND ALSO BEYOND ANYTHING THAT WAS ENVISAGED BY THE ORIGINAL NAFTA NEGOTIATORS.

CONCLUSIONS

IN MY VIEW, THE NAFTA SPS PROVISIONS HAVE BEEN IMPLEMENTED IN A VERY CONSTRUCTIVE AND POSITIVE MANNER WHICH HAS WORKED TO THE BENEFIT OF ALL THREE COUNTRIES. HOWEVER, THIS HAS NOT OCCURRED WITHOUT ENCOUNTERING SOME PROBLEMS, MOST OFTEN IN THE FORM OF DELAYS IN REMOVING SPS RESTRICTIONS WHEN THE SCIENTIFIC BASIS FOR THEM NO LONGER EXISTS.

THE NEW INITIATIVES JUST ANNOUNCED TWO DAYS AGO ARE CLEARLY GOING TO TAKE THE THREE NAFTA COUNTRIES MUCH FURTHER ALONG THE SPECTRUM TOWARD COMMON NORTH AMERICAN

STANDARDS AND PROCEDURES FOR DEALING WITH SPS ISSUES THAN HAS BEEN THE CASE SO FAR.

HOWEVER, DESPITE THIS VERY POSITIVE VIEW, I THINK THAT THE THREE COUNTRIES WOULD DEAL WITH SPS ISSUES IN A RADICALLY DIFFERENT WAY THAN WHAT WAS AGREED WHEN NAFTA WAS CREATED IF THEY WERE TO BE NEGOTIATING THE NAFTA NOW RATHER THAN IN THE EARLY 1990'S.

NAFTA ENTERED INTO FORCE ON JANUARY 1, 1994, ONE YEAR BEFORE THE ENTRY INTO FORCE OF THE URUGUAY ROUND RESULT WHICH INCLUDED THE WTO AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES. WHEN THE NAFTA NEGOTIATIONS WERE CONCLUDING, THE URUGUAY ROUND WAS AT AN IMPASSE. ALTHOUGH THE DRAFT TEXT OF THE WTO SPS AGREEMENT WAS SITTING IN GENEVA, IT WAS NOT CLEAR AT THAT TIME IF THIS DRAFT AGREEMENT WOULD EVER BE IMPLEMENTED OR NOT. THIS UNCERTAINTY CAUSED THE NAFTA NEGOTIATORS TO TAKE MOST OF THE SPS PROVISIONS (WITH SOME ADAPTATIONS) FROM THE DRAFT WTO TEXT AND INCORPORATE THEM INTO THE NAFTA. IN MY VIEW, THIS WAS A HISTORICAL ACCIDENT THAT WOULD NOT HAVE HAPPENED IF THE URUGUAY ROUND HAD CONCLUDED ON ITS ORIGINAL TIME SCHEDULE.

IF THE THREE COUNTRIES WERE NEGOTIATING THE NAFTA NOW, I DON'T THINK THAT THEY WOULD INCLUDE ANY SUBSTANTIVE PROVISIONS DEALING WITH SPS MEASURES. I THINK THAT THEY WOULD SIMPLY REAFFIRM THE THREE PARTIES COMMITMENTS TO THE WTO AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES AND AGREE TO WORK TOGETHER WITHIN NAFTA TO IMPLEMENT SPS MEASURES AMONG THE THREE PARTIES IN ACCORDANCE WITH THE WTO RIGHTS AND OBLIGATIONS.

TO THIS END IT WOULD PROBABLY STILL BE NECESSARY TO
CREATE AN SPS COMMITTEE AND TECHNICAL WORKING GROUPS TO DEAL
WITH SPECIFIC SPS PROBLEMS AND FOSTER INCREASED COOPERATION
BETWEEN THE THREE PARTIES ON SPS ISSUES AND THE DEVELOPMENT OF
INTERNATIONAL STANDARDS.

THE RECENTLY ANNOUNCED NEW INITIATIVES MAKE IT CLEAR
THAT THE THREE COUNTRIES ARE NOT SATISFIED WITH THE STATUS QUO
AND WANT TO INCREASE THE DEGREE OF INTEGRATION OF THEIR SPS
REQUIREMENTS AND ENFORCEMENT AND INSPECTION MECHANISMS. IT
REMAINS TO BE SEEN HOW MUCH FARTHER THEY WILL BE ABLE TO MOVE
IN THIS DIRECTION.

I HOPE THAT THIS EXPLANATION OF CANADA'S EXPERIENCE IN
DEALING WITH SPS ISSUES WITHIN NAFTA WILL PROVIDE SOME BENEFIT
FOR YOUR DELIBERATIONS.

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