THE NAFTA DURUM DISPUTE AND THE *CANADA GRAIN ACT*: A CASE STUDY IN INSTITUTIONAL DEVELOPMENT

Marjorie Benson

Durum, a high-yielding grain and the main ingredient in pasta, has been the subject of a five-year trade invective against Canada by United States western farm representatives in Washington, D.C.. During ratification proceedings of the Canada-U.S. Free Trade Agreement (FTA)[1] in 1987, a group led by Senators Max Baucus (D-Montana),[2] Kent Conrad (D-North Dakota) and Conrad Burns (R-Montana) claimed that the Canadian Wheat Board was manipulating the price of durum so as to undercut the U.S. domestic price. In November 1993, President Clinton needed 218 votes in the U.S. House of Representatives to pass the North American Free Trade Agreement (NAFTA).[3] He had 186 votes, while 206 were opposed and 42 were undecided. In return for NAFTA votes,[4] President Clinton agreed to threaten trade sanctions against Canadian durum entering the U.S.

This paper compares the "durum dispute" to the evolution of the *Canada Grain Act*[5] at the beginning of the century to suggest what might lie ahead in the development of effective transnational agricultural institutions. Part I describes the dispute, Part II presents a brief history of the *Canada Grain Act*, and Part III develops a model of statutory development at the domestic and international level and attempts to place NAFTA on this continuum.

THE DURUM DISPUTE

The United States produces approximately 2 million tonnes and consumes 2.3 million tonnes of durum annually. In 1985-86, Canada produced approximately 2 million tonnes of durum, virtually none of which was sold into the U.S. In 1991-92, Canada produced 4.6 million tonnes and sold 400,000 -500,000 tonnes into the United States, constituting 20 percent of the U.S. domestic market. Sales by Canada of all grains to the U.S averaged 1 million tonnes from 1990 to 1992, and increased to 2.5 million tonnes in 1992-93. In 1993-94, Canada sold 747,800 tonnes of all grains into the U.S by the end of the first four months in the crop year, making it Canada's second largest customer.[6]

In May, 1992, following the implementation of the FTA on January 1, 1989,[7] the U.S. requested an Article 1807 Binational Panel[8] to investigate Canadian durum sales under Article 701.3, which states:

> Neither party, including any public entity that it establishes or maintains, shall sell agricultural goods for export to the territory of the other Party at a price below the acquisition price of the goods plus any storage, handling or other costs incurred with respect to those goods.

The Panel issued its report on February 8, 1993.[9] The Parties had agreed on the questions the Panel should examine in determining whether Canada had breached Article 701.3. The main issue was whether "acquisition price" included only the initial price paid to farmers by the Canadian Wheat Board on delivery, or whether it also included interim and final payments. The Panel concluded that Parties' understandings, as well as a purposive interpretation of the Agreement,[10] required that the price of acquisition include only initial payments because interim and final payments constituted profits. It asked whether "storage and handling" included the $2.00 per tonne Canada Grain Commission costs for inspection, weighing and

certification costs, concluding that it did not. It also asked whether fixed administrative costs of the Canadian Wheat Board should be included, and held that they should not.

Finally, the Panel examined whether "other costs incurred" included the federal government's $20.00 per tonne contribution to the cost of rail transportation through the "Crow Benefit."[11] FTA Article 701.5 prohibits Canada from applying this "Crow Benefit" subsidy on grain moving to United States through West Coast ports. But, the subsidy is not prohibited on grain moving through Thunder Bay, some of which moves southward into United States, on the grounds that it is a domestic subsidy.[12] The Panel noted that the only export subsidy explicitly excluded is the West Coast movement, and no domestic subsidies are prohibited,[13] despite Article 701's expressed goal of "achiev[ing] on a global basis the elimination of all subsidies which distort agricultural trade."[14]

The Panel concluded that its ruling on the interpretation of Article 701.3 constituted a declaratory judgment in favour of Canada, but that a final ruling on the matter could not be made until the Parties resolved "information-sharing" disputes to reveal the actual selling price. The Canadian Wheat Board offered to open its books to annual audits retroactive to January 1, 1989, subject to a U.S. promise of confidentiality. The Parties agreed, with Canada offering to pay half the auditing costs. The Panel recommended the establishment of a working group under Article 1802.4 to oversee external auditors.

Nonetheless, the U.S. farm lobby against Canadian durum continued and led to the November NAFTA vote deal. President Clinton agreed that the U.S. would consult with Canada for sixty days (until January 16, 1994), and that if no agreement was reached the U.S would launch an investigation by the Department of Commerce International Trade Commission (ITC).[15] Under the 1933 *Agricultural Adjustment Act*, if the ITC finds that imports "undermine the American support programs for farmers,"[16] the President may impose quotas and tariffs. Section 22 of that *Act* also permits the President to impose such restrictions on an emergency basis without waiting for the results of an investigation. President Clinton also agreed to require Canadian shippers to obtain end-use certificates[17] in response to allegations that Canadian grain is being blended into American grain and sold under the Export Enhancement Program (EEP).[18]

Following the NAFTA vote, U.S. Secretary of Agriculture Mike Espy and Canadian Minister of Agriculture Ralph Goodale began negotiations. The sixty days ended January 16, 1994, with no agreement. The ITC launched its investigation; hearings were to be held in April,[19] with a report expected in late summer. Prime Minister Chrétien reported in March that he had written to President Clinton and spoken to him twice about the matter, as well as to Vice-President Al Gore once, "stress[ing] the importance of wheat sales to Canada's economy[20] ... [and seeking] to minimize damage to Canadian durum farmers who face the loss of a valuable market."[21] Mr. Clinton expressed his preference for a negotiated settlement. Messrs Espy and Goodale met again March 21, 1994, with no agreement. By March 29, Canada said it would take counter measures if U.S. imposed sanctions against Canadian durum.[22] Talks continued the week of April 11-16 in Marrakesh, Morocco,[23] but they ended without agreement, with the U.S. saying it intended to move April 22 to "some unilateral decisions that must be made to protect our producers," and Canada saying that it would "defend itself and do so very vigorously."[24]

Newspaper reports during negotiations fleshed out the respective positions.[25] The Senators believe that Canadian Wheat Board selling practices of bulk contracts, rather than daily quoted street prices used by the U.S. market, allow it to manipulate the price below its U.S. rivals,[26] and that Canada subsidizes its exports through the Crow Benefit.[27] A spokesperson for the National Association of Wheat Growers in Washington said "the monopoly powers of the Canadian agency are contrary to the American way of doing business ... If they want to play in our market, they should play by our rules."[28] Montana and North Dakota farmers demonstrated outside local elevators saying that the Canadian grain is "driving down the price of [our] grain."[29] At the U.S. ITC hearings in April, Senator Baucus called the Wheat Board a "secretive nationalistic cabal" which manipulates the market:[30]

> What we have in wheat is not free trade with Canada. The flood of imports is not a natural result of open trade — it is artificial and the deliberate result of Canadian government policy ... [the Canadian Wheat Board] acts as a barrier to imports by refusing to buy U.S. grain, and it acts as a source of export subsidies through predatory pricing in the United States and other markets ... 83 Canadian grain trucks cleared

> customs north of Shelby [Montana] each week last November. By December it was 149 trucks a week. By January, 223 a week ... The flood has driven down prices. That in turn has triggered higher 'deficiency payments' made to farmers by Washington when market prices fall short of a target. Those have totalled about $600 million over the last four years. Meanwhile, much of the unsold U.S. crop goes into storage, where it could upset market conditions later.

Senator Burns argued that the Canadian Wheat Board is a corporation created by government, making it an unfair trading institution:[31]

> Our farmers make their sales decisions as individuals. Canadians sell into the pool, which then makes a sale as a government decision. That's not a level playing field ... That's not free trade and it's certainly not fair trade.

Canadian Wheat Board Chief Commissioner Lorne Hehn said that Canadian grain is sold at full domestic prices into the U.S. market and that American millers like the Canadian grain for other reasons:[32]

> Previous investigations have shown our practices are consistent with what we've said they are. There is no significant difference between our sales price to U.S. millers and the price they'd have to pay for U.S. durum of similar quality ... American millers like the consistency of Canadian wheat ... they are willing to pay a premium for Canadian grain because we offer other things ... They can buy now and we'll deliver later, we guarantee supply and we have a quality system that is second to none in the world.

Canada argues that the "billion-dollar" EEP has made the export market so attractive for buyers of U.S. grain that there is a shortage for domestic purposes, creating a demand for the Canadian grain. Canada points to a sale to China in which American export companies were eligible for subsidies of up to $66.61 per tonne. International pasta producers can buy the subsidized American grain, produce pasta, and sell it back into the U.S. market at a price lower than American pasta makers can purchase the grain domestically and process it.[33]

Reports during the negotiations were that Canada offered to limit exports to the U.S. to current levels of 2.5 million tonnes/year, to reduce tariffs on ice cream and yogurt in return for the U.S. ceasing to subsidize grain exports to Mexico under EEP, and to end transportation subsidies on western grain shipped to United States via Thunder Bay.[34] Senator Baucus said that to be acceptable, a negotiated settlement "must limit Canadian grain exports to a level sufficient to end interference with our farm program," a level he placed at 500,000 tonnes of Canadian grain in total, an 80 percent reduction.[35] Former Wheat Board Minister Charlie Mayer said that for Canada to offer voluntary limits would not only be contrary to the spirit of free trade but would also be "foolhardy" in a fast-changing world wheat market. He called the American moves "a dangerous mix of ignorance and politics" and encouraged Canada not to capitulate:[36]

> The Americans still do not understand how the wheat board operates ... It's always been the American attitude that if someone beats them, they're cheating ... Let's go for a panel ...

As the negotiations progressed, Canada began to say that it would "defend itself"[37] and was "making a provisional list of U.S. products to attack with retaliatory penalties."[38] By the end of the negotiations, Canada is reported to have refused to place a limit on grain exports to the United States.[39]

The auditor investigating Canadian Wheat Board sales pursuant to the Binational Panel reported in March, 1994. Of the 105 sales contracts into the U.S. after January 1, 1989, the auditor found 102 in compliance with the FTA, with selling prices exceeding acquisition, storage and handling costs by $28.25 per tonne.[40] The three sales found not in compliance were during the transitional period.

Despite the logical inference that the auditor's findings, combined with the declaratory judgment of the Binational Panel, exonerate the Board of Article 701.3 infractions, Senator Baucus called the audit report a "smoking gun evidencing Canadian subsidies."[41] Senator Conrad threatened emergency action under Section 22:[42]

> What Canada needs to know is that the pressure is relentless in this country. It is not going to stop ... Offers and counter-offers have been rejected, with the latest being a proposal to limit Canadian imports to an average of the last three years' volume. That's not acceptable ... that would reward Canada's previous bad behaviour ... Espy

> and [U.S. Trade Representative] Mickey Kantor favour the [emergency] penalties, but others in the administration resisted ... After a three-week 'blitzkrieg' against the holdouts, the White House is now united on an approach to end unfair subsidies.

The Senators say "the White House has agreed to file notice under GATT's rules if there is no deal by April 22."[43]

Evolution Of The Canada Grain Act[44]

Since 1801, the grain industry in Upper Canada had been developing standardized weights and grades, as well as a system of grade inspection.[45] In 1874, the new Dominion of Canada adopted weights, standards and an inspection regime for all of Canada.[46] Parliament continued to revise the legislation until the turn of the century.[47]

Canadian Pacific Railway, the only shipper for grain from Western Canada, shipped the first export grain from Winnipeg to Port Arthur in 1883 in bags. After Canadian Pacific opened two grain terminals at Port Arthur in 1884, it shipped grain in box-cars to its terminals. Across the prairies, local entrepreneurs built flat covered warehouses at trackside. At harvest, farmers hauled their grain by horse-drawn wagons to the warehouses. The merchants ordered rail cars and shovelled the grain into box-cars when the railways "spotted" them. Canadian Pacific wanted U.S.-style "elevators," which employed gas, steam or blinded circling horses to operate "cup conveyers," a technology which reduced the loading time for cars and achieved faster "turnaround" on the cars. Rather than invest its own capital, Canadian Pacific offered free leases on track-side property and a monopoly on box-cars to companies willing to build elevators. During the 1890s, regional companies such as Parrish and Heimbecker, Ogilvie, Paterson, and Richardson built aggressively, and there were often five or six competing modern elevators at each prairie point. By 1897, Canadian Pacific ignored the flat warehouses operated by local merchants, refusing to respond to their orders for rail cars.

The elevator companies began to buy and sell grain as well as handle it as a way of increasing profits. Farmers believed that many agents cheated in weighing, grading and deducting for weed seeds (dockage), and discriminated as to whose grain they accepted. Prices varied dramatically across the year, and farmers suspected price-fixing.

In 1898, James M. Douglas, a farmer-cleric M.P. from Brandon introduced a private members' bill[48] to prohibit fraud in weights, grades and dockage and to require the railways to honour common carrier responsibilities to accept all business, including orders from flat warehouses. The Bill was withdrawn when the railways agreed to provide cars to individual farmers on order. They did not, however, agree to supply cars to warehouses. Douglas re-introduced his Bill in 1899,[49] including provision for a Chief Inspector to enforce fair dealing by elevator agents.

Unwilling to accept a private member's bill, but conscious of the power of the western protest movement, the government sent the Bill to Parliamentary Committee. The Committee recommended legislative action. The House of Commons accepted the Chief Inspector provisions, but not the cars-to-warehouses provisions.[50] In the wake of the resulting storm of protest, the government appointed the first Royal Commission[51] into the grain trade in 1900. After 21 hearings and 238 witnesses, the Commission recommended a regulatory regime similar to that employed in Minnesota,[52] including anti-fraud provisions in dockage and weighing, and a supervisor of grain handling facilities.[53]

On the eve of a general election, Sir Wilfred Laurier's government enacted a majority of the Commission recommendations as the 1900 *Manitoba Grain Act*.[54] The Act required railways to supply cars to warehouses and farmers, and established a Grain Commission to licence elevators, to bond elevator agents and grain buyers, to approve handling tariffs, to inspect records and to settle disputes.

The crop in 1901 was large, and the railways, concerned about efficient use of the rail cars in the few pressured months before freeze-up, again refused to supply cars to farmers or warehouses. Elevators slashed prices. Farmers felt trapped and claimed the elevator companies and railways were blockading their wheat. M.P. Douglas estimated farmer losses at $5 million. That December, the farmers formed the Territorial Grain Growers' Association and continued to pressure Ottawa.

In 1902, Parliament amended the *Manitoba Grain Act*,[55] requiring each railway agent to keep a "car order" register recording orders and to distribute cars in strict rotation according to date of registration. The

1902 crop was again large. Canadian Pacific again ignored the car order legislation, and "brawls broke out when cars were delivered."[56] The Territorial Grain Growers' Association sent a delegation to Winnipeg to advise Canadian Pacific of violations of the Act. When Canadian Pacific failed to take action, the Association filed a formal complaint with the Commissioner under the Act. The Commissioner found for the farmers. The railway appealed and the Supreme Court found for the farmers in the "Sintaluta" case.[57] Parliament again amended the legislation in 1903[58] to enforce the procedure and to allocate each producer and warehouse operator one car prior to filling any multiple orders.

The Territorial Grain Growers' Association also alleged that elevator companies were grading wheat more leniently at port terminals than at country elevators. A 1906 Royal Commission verified the allegations, and recommended fifty amendments to the Act. These included making elevator companies liable for damages for weight frauds, requiring samples of all bins to prevent grading fraud, paying farmers for the commercial value of screenings, supervising, cleaning practices at terminals, levying a fee of $2 per booking to prevent fictitious names in the car order process, prohibiting pooling among country elevators, authorizing the Grain Commissioner to order equitable distribution of cars and to dismiss agents for fraudulent practices. Again, on the eve of an election, Parliament enacted the recommendations in 1908.[59] The new Act gave the Grain Commission full control of cleaning, binning and shipping of grain from the terminals, and power to inspect terminal records and receipts. In its investigations that winter, the Grain Commission concluded that "promotion of grades by mixing had taken place on a large scale ... two companies were fined and threatened with loss of their licences."[60] Sir Wilfred Laurier's Liberals won the election in 1908, but lost in 1911.[61] Sir Robert Borden's Conservatives then re-enacted the 1908 amendments as the 1912 *Canada Grain Act*.

After the war, complaints over the handling and purchasing of grain resurfaced.[62] Yet again, Parliament amended the *Canada Grain Act* in 1919 to require any terminal which had one-quarter of one percent more grain in storage than it showed receipts to sell the surplus and pay the proceeds to the Board of Grain Commissioners.[63] In 1921, Parliament appointed another Royal Commission. A terminal which had been charged with overages challenged the constitutionality of both federal regulation of the elevator system and the Royal Commission.[64] In 1925, the Supreme Court found the 1921 Commission and government regulations of elevators unconstitutional. The federal government amended the *Canada Grain Act* to declare elevators "works for the general good of Canada" under section 92(10)(c) of the *British North America Act*.[65] Even before the Supreme Court rendered its decision, new complaints had led to new Commissions[66] but, following the decision, Royal Commissions were no longer used to investigate the grain trade, and Parliament instead referred complaints to the House Committee on Agriculture and Colonization. Amendments to the Act in 1927 permitted farmers to select at which terminal their grain would be delivered to port,[67] and 1929 amendments prohibited mixing the top grades of grain.[68] The Act stabilized in 1930,[69] and continues to be the basis of Canada's reputation in the world wheat market as a supplier of reliable, clean, consistently graded grain.

Parts of the Act that remained controversial in 1930 became separate legislative regimes. For example, marketing issues proved larger than questions of fraud by elevator companies. Farmers began to question the entire structure of marketing grain. The roots of the struggle which took place within the debate on the *Canada Grain Act* from 1900-1910 led, in the 1920s, to the formation of the prairie co-operative Wheat Pools. The regime evolved through several "temporary" Wheat Boards, and to a "compulsory" Canadian Wheat Board in 1949 with monopoly control over marketing western wheat, oats and barley. The struggle remains underway today. The Board is under active challenge by the U.S., evidenced by the durum dispute and by an earlier insistence that Canada remove Canadian Wheat Board control over imports of wheat, oats and barley.[70] There is also considerable dispute internal to the western farm community concerning the Board. Some western Canadian farm groups challenge the Board, believing they stand to make greater profits trading individually on the "open market,"[71] while others feel that the Board's powers have already been eroded excessively.[72]

Similarly, transportation issues proved larger than car-allocation procedures, and became the subject of a seventy-five year struggle, still ongoing, over the "Crow Benefit."[73]

ANALYSIS

In the domestic context, written legal regimes are termed constitutions or statutes. They are created (in democracies) by elected legislatures and are enforceable by the state. In the transnational context, the terms are those of international law: the regimes are called charters, treaties, conventions, protocols, declarations, or resolutions, and are created by the agreements of sovereign states in voluntary assemblies. These are subject to varying levels of enforcement. Legal regimes in both contexts evolve, and a pattern can be discerned of the stages through which both regimes pass in developing a legal regime on any particular issue. At least four stages are discernible in the evolution of both the *Canada Grain Act* and NAFTA as viewed through the lens of the durum dispute.

The pre-existing state in agriculture is one of no regulation, a market "free-for-all." In the domestic context, farmers, railways and grain companies negotiate a relationship, however unstable, through the instruments of price and supply, competition, co-operation and monopolies/oligopolies. In the international context, sovereign states negotiate relationships, again however unstable, by unilaterally imposing tariffs and import quotas, creating export subsidies, and penalizing each other with countervailing duties. Outcomes are determined on the basis of economic strength.

In Stage One, which might be called the "Recognition" or "Statement of Objectives" Stage, there is a recognition that the matter is an appropriate subject of state intervention, and the state(s) move to control or influence the relationship in some way. In the domestic context, such intervention takes the form of a legislative pronouncement, such as: there shall be a grading regime. In the international context, states agree not to penalize each other for particular (protectionist) behaviour.

In Stage Two, which might be called the "Application" Stage, the state(s) articulate the meaning of the objective when applied to particular contexts. In the domestic context, the railways were ordered to provide cars to warehouses. Regimes move progressively to more specific definitions of application, such as, for example, requiring separate storage for each grade, or establishing a car order registry. In the international context, states agree to specific tasks which will move toward the objective identified in Stage One.

In Stage Three, which might be called the "Enforcement" stage, the state(s) articulate administrative and enforcement mechanisms to ensure that the applications are carried out. In the domestic context, the Canada Grain Commission, inspectors and penalties were established; in the international context, binational panels, ministerial committees and working groups were provided for.

In the domestic context of western democracies, the statutory silence tends not to be broken unless it can be filled with a pronouncement of "hard law," i.e. prohibited or mandated behaviour which is objectively identifiable and enforced by impartial third parties. In the international context, what is called "soft law" plays a much larger role. Scholars agree more on what soft law is not (namely, hard law) than on what it is.[74] It can be broadly defined as a range of statements of objectives and understandings which do not define objectively identifiable behaviour enforced by impartial third parties. Such statements contained within legal instruments (charters, treaties, conventions, protocols or resolutions) are termed "legal soft law," and are seen to have some degree of enforceability among states having accepted the instrument. States who have not accepted the instrument and thus cannot be held accountable in relation to the instrument are said to be subject to "non-legal soft law."[75]

The striking difference between the *Canada Grain Act* and FTA/NAFTA as legislative instruments is the inclusion of "soft law" at each of the Stages in the latter texts. In both the FTA and NAFTA, the Parties commit, for example, to work toward a reduction in agricultural subsidies through the GATT negotiations (Articles 701 & 705 respectively), and to work toward improving market access (Articles 703 in both). NAFTA adds a commitment "to take each other's interests into account in export subsidies to third countries" (Article 705.5), and "to work toward domestic support measures that have minimal or no trade distorting or production effects" (Article 704).

From a "hard law" perspective, such statements are mere "hortatory" statements, perhaps useful as a guide to interpretation, but lacking the application and enforcement mechanisms which make law "law." Missing is the institutional power of domestic courts to create application and enforcement mechanisms even where none are specified in the legislation. For example, in the *Canada Grain Act*, once Parliament declared that the railways must allocate cars to farmers, a court faced with litigation on the issue assumed its task was to articulate both a means and an

enforcement procedure. Over time, the Stage Two applications and Stage Three enforcement mechanisms tend to become enshrined in legislation. The *Canada Grain Act* continued to evolve over 130 years through these stages. Descriptions of grades, for example, were modified for thirty years (1863-1899) to achieve a Stage One description that satisfied the various interests in the industry. Car allocations applications were revised for a decade (1900-1910) before workable Stage Two definitions emerged, and Stage Three administrative and enforcement mechanisms in both anti-fraud and anti-discrimination provisions took repeated revisions over thirty years (1900-1930). The *Grain Act* did not begin to "live as the "Magna Carta"[76] of prairie grain farmers until the statute included Stage Two and Stage Three provisions.

Soft law advocates argue that even absent institutional mechanisms to fashion implementation and enforcement strategies, soft norms are legally significant in a bilateral and multilateral context because they articulate a negotiated relationship among diverse cultural, economic, political and legal sovereigns. Hortatory commitments, they argue, "create expectations" of state behaviour, to "delegitimize" a previous norm, and to "overcome deadlocks":[77]

> Soft laws avoids or resolves disputes; first by addressing the basic question of when subjects are international in nature; and second, by providing a guide for conduct, a mechanism for considering disputes, and a basis upon which discussions can be carried out.

One author cautions that in the agricultural context, United States has historically deployed soft law commitments to create the appearance of following trade liberalization while continuing to practice protectionism.[78] From this perspective, NAFTA's reservation of domestic jurisdiction over "changes to domestic support measures" (Article 704), and "countervailing duties [on] subsidized imports" (Article 705(7)(b)) are hard law clauses which have the effect of undermining such soft law commitments eliminating all tariffs between the countries within ten years (FTA, Art. 401).

FTA and NAFTA do contain some Stage Two application commitments. In the FTA, the Parties made a start on specifying aspects of their relationship in agricultural trade in which they agreed not to operate in the mode of unilateral barriers and retaliatory countervails. The Parties agreed to prohibit export subsidies on bilateral trade (Art. 701), and to refrain from imposing countervailing duties on meat (Art. 704) and on fruit and vegetable imports for 20 years (Art. 702) in all but specified circumstances. The U.S. agreed not to retaliate for Canadian import quotas on poultry and eggs (Art. 706) and to loosen slightly quotas on sugar products entering the U.S. (Art. 707). Canada agreed to eliminate transportation subsidies on grain moving to the U.S. through West Coast ports and to eliminate import licence requirements for wheat, oats and barley (Art. 705). In NAFTA, Mexico agreed to respect Canada's import quotas on supply-managed products (Annex 703.2 Sec. B), and Mexico and United States agreed to permit specified amounts of sugar to cross each other's borders without penalty for fourteen years (Annex 703.2 Sec. A). The Parties agreed in FTA to develop joint accreditation, training and use of inspectors to implement Stage One commitments to harmonize technical regulations and standards (Art. 708), and NAFTA includes more extensive commitments in a stand-alone agreement ("Sanitary and Phytosanitary Measures": Art. 709-724).

Institutional mechanisms in NAFTA have more hard law characteristics than do those in FTA. In the FTA, the dispute resolution sequence is consultation (Art. 1804), a meeting of the Ministerial Commission (Art. 1805), and recommendatory Binational panels (Art. 1807), with binding arbitration available in very limited situations (Art. 1806). In NAFTA, the circumstances in which mandatory arbitration can be invoked are expanded, and a Party may suspend participation in the Binational process if another Party refuses to follow Panel recommendations (Art. 2019). Nonetheless, Parties retain the right to choose between dispute resolution provisions under NAFTA or GATT (Art. 2005).

The durum dispute reveals a struggle over whether the hard law or soft law norms should govern in the trans-national agricultural agreements. The U.S. actions reflect a preference for the hard-law approach, where "hortatory" statements are not legal obligations.[79] The Binational Panel, on the other hand, obtained the U.S.'s agreement to employ the Vienna Convention on the Law of Treaties[80] in interpreting Article 701.3 of the FTA, and the U.S. agreed in the NAFTA Agreement on Dispute Resolution to be bound by the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitration Awards (Art. 2022).

Movement from Stage to Stage in the domestic regime involved political struggle. Legislators moved off the pre-existing unregulated market to Stage One statutory objectives only when those who felt disempowered by the status quo organized and pressured to get on the political agenda. Stage Two operational strategies required more political pressure. Governments acted only after individual farmer complaints, M.P. Douglas' private member's bills, the organization of the Territorial Grain Growers' Association, a litany of Royal Commissions, and fear of electoral defeat. Stage Three administrative and enforcement mechanisms often only emerged after litigation. Railways and grain companies avoided Stage Two enactments until sued by the Territorial Grain Growers' Association. Legislators then amended enforcement provisions to patch the gap litigation had exposed between the law and practice.

The durum dispute also reveals a political struggle. The U.S. Senators demanded protectionism as the price of their votes on behalf of trade liberalization.[81] The *Agricultural Adjustment Act* is a self-proclaimed protectionist Act. Some experts regard the U.S. farm program, its marketing system, and the EEP as constituting the most "socialist" system in the world.[82] The Binational Panel and the auditors cleared the Canadian Wheat Board of dumping infractions in durum sales, and the Crow Benefit to Thunder Bay is by the U.S.' own acknowledgment a domestic subsidy, which the U.S. did not want on the table during FTA negotiations.

The emergence of transnational agreements in agriculture introduces old political questions in new ways. In Canada, interprovincial trade disputes which remained submerged under the guise of a common "enemy" are now directly exposed.[83] Provincial influence over matters directly influencing local economies is diminished.[84]

Further, in a context where the political actors are nation-states, it is less clear how interest groups can have an effective voice. Farmers found that electoral clout was essential to achieving statutory reform. Domestic electoral pressure remains available, but agriculture's electoral voice has diminished significantly over the century[85] and, even if present, influences only one party in the relationship. Do interest groups need to "internationalize" in order to have a political voice capable of being heard by both parties? For example, pasta makers and consumers in both Canada and the United States will pay higher prices if the U.S. imposes penalties on Canadian durum and Canada retaliates with penalties on pasta.[86]

Interest groups also become responsible in a new way for the spin-off effects of positions they advocate. States link agriculture to other aspects of the state-to-state relationship,[87] or do not.[88] What if, as some suggest, NAFTA leads to human rights violations,[89] or to environmental degradation beyond the scope of the side agreements?[90]

In conclusion, the introduction of soft law norms create possibilities for respecting the sovereignty of multiple groups and interests which the unilateral nature of domestic statutory regimes precludes. The treatment of agriculture in the FTA and NAFTA suggests that, except for the lack of domestic-style state coercion in Stage Three enforcement regimes, the transnational regimes also are moving toward the hard law end of the spectrum.[91] Given the greater complexity of the legal process, as well as the complexity of jurisdictions, economic situations and cultures, there is no reason to believe that stable transnational regimes will not require long periods of time and continuing experimentation.

Agriculture, with its highly protectionist past, its entrenched interests and its domestic political bite, provides a graphic site of the conflicts and possibilities presented by the emerging transnational legal order. The Agreements already evidence enriched institutional possibilities relative to those developed at the domestic level in Canada. They include not only hard law dimensions which could develop the same clarity, precision, and detailed accountability that permit the *Canada Grain Act* to pinpoint breakdowns in a complex system accurately and efficiently and to apply an immediate remedy. They also contain soft law dimensions recognizing mutual sovereignty, providing alternative dispute resolution paths, and articulating common understandings which permit diverse interests to arrive at consensual co-existence. The durum dispute suggests, that given the evolution of the transnational agreements in agriculture, the realization of those new possibilities will not be borne without a great deal of time, experimentation, and a re-definition of political involvement on the part of citizens and interest groups.❑

Marjorie Benson
College of Law, University of Saskatchewan. I am deeply grateful to Donna Greschner, David Schneiderman and Don Buckingham.

Endnotes

1. 27 I.L.M. 288 (1988).

2. Senator Baucus is chair of the Senate finance subcommittee on International Trade.

3. 32 I.L.M.297 (1993)

4. Specifically, those of Rep. Glenn English (D-Okla), Rep. Bill Brewster (D-Okla), Rep. Bill Sarpaluis (D-Tex), and Rep. Larry Cambert (R-Tex).

5. *Canada Grain Act*, S.C. 1970-71-72, c.7, now R.S.C. 1985, c.G-10.

6. Only Brazil purchased more, at 897,500 tonnes. "Canadian Wheat Sales to U.S. brisk" *The Star Phoenix* (14 January 1994). In the two decades since Russia became a major grain importer, it had become Canada's largest grain customer. Until the late 1980s it paid cash, but after switching to credit accumulated a $1.5 billion debt; in 1992-3, Canada refused further credit. Russia has announced that it does not intend to import grain in 1993-4. "Yeltsin Says 'Nyet' to Grain" *The Star Phoenix* (10 March 1994). China, Canada's second largest customer during the 1980s, has cut back imports as it makes dramatic steps to self-sufficiency. "Brazil Tops List of Wheat Buyers" *The Star Phoenix* (5 January 1994).

7. *Canada-United States Free Trade Implementation Act*, S.C. 1988, c.C-10.6.; *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 100 PL 449, 1988 HR 5090, 102 Stat.1851.

8. Each country appoints two panel members, with the Chair agreed on by both Parties.

9. *Interpretation of Canada's Compliance with Article 701.3 With Respect to Durum Wheat Sales*, F.T.A.D. [1993] No.2, CDA-92-1807-1, Canada-U.S. Free Trade Panel, Feb 8, 1993.

10. In the preamble, Canada and United States resolve, *inter alia,* to "ensure a predictable commercial environment for planning and investment."

11. *Western Grain Transportation Act*, S.C. 1980-81-82-83, c.168.

12. The parties agreed that an export subsidy is one "conditional" on export, i.e. a subsidy that is only available if goods are exported to another country, and that every other form of subsidy is a "domestic subsidy" even though, in fact, goods which are exported may have benefitted from the subsidy. Panel Judgement, *supra* note 9 at par. 29. Some of the grain moving to Thunder Bay moves to export markets through the St. Lawrence, some moves southward to the U.S., and some moves into domestic markets in Central and Eastern Canada.

13. Deputy U.S. Trade Representative Alan Holmer explained in May, 1988 that the reason the Crow Benefit on grain moving to Thunder Bay was not prohibited was that "the subsidies that are provided to the wheat going east are not contingent upon export. They are, therefore, under the rules of domestic subsidies, and we did not want to put our domestic subsidies on the table with their domestic subsidies as part of these negotiations." Canada's submission to the Panel, *supra* note 9 at par. 54.

14. *Canada-U.S. Free Trade Agreement*, *supra* note 1, Article 701.

15. "Clinton Targets Wheat" *The Star Phoenix* (16 November 1993).

16. 7 U.S.C.S. c.26 § 601 (Law. Co-op. 1993).

17. A documented order for grain from the importer indicating destination and use.

18. Under the Export Enhancement Program, United States pays grain companies a bonus of up to $60.00/tonne for grain sales into designated countries. The effect of the program is to lower the international price and make U.S. grain more attractive to countries in which the U.S. wishes to build or maintain market share.

19. The International Trade Commission held two days of public hearings in Bismarck, North Dakota, April 6-7, 1994.

20. Canadian Press, "PM, Clinton Trade Letters About Trade" *The Star Phoenix* (30 March 1994).

21. "Durum Dispute on Chrétien's Agenda" *The Star Phoenix* (5 March 1994).

22. "Durum Fracas Could Lead to Trade War: Goodale Says Canada Prepared to Take Tough Defensive Posture" *The Star Phoenix* (29 March 1994).

23. "Trade Talks Planned on Agricultural Dispute" *The Star Phoenix* (2 April 1994).

24. "Canada-U.S. Talks on Wheat Imports Collapse" *The Star Phoenix* (16 April 1994).

25. Citations here are to a provincial daily newspaper, the *Saskatoon Star Phoenix* to reflect the extent to which the stories can be pieced together from sources that are accessible to both the lay and urban person.

26. Specifically, the concern seems to be that the classification of initial payment as "acquisition costs" and final payment as "profit distribution" permits the Canadian Wheat Board to transfer money from initial payment to final payment and, hence, arrive at a lower selling price. The Binational Panel had found that such a possibility was commercially unfeasible.

27. Vern Greenshields, "Durum Fairly Traded: Goodale" *The Star Phoenix* (17 November 1993).

28. "CWB Won't Apologize For Sales in U.S." *The Star Phoenix* (17 November 1993).

29. "Montana Farmers' Wheat Blockade Raises Stakes" *The Star Phoenix* (14 January 1994); "Farmers Resume Grain Blockade" *The Star Phoenix* (19 January 1994); "U.S. Farmers Protest Grain Imports" *The Star Phoenix* (3 February 1994).

30. "Wheat Board 'Cabal' cost U.S. $600 million: Montana Senators" *The Star Phoenix* (9 April 1994).

31. *Ibid.*

32. "CWB Won't Apologize for Sales in U.S." *The Star Phoenix* (17 November 1993); "Brazil Becoming Largest Customer" *The Star Phoenix* (5 January 1994).

33. "Durum Limit Foolhardy: Mayer" *The Star Phoenix* (20 January 1994).

34. "Goodale, U.S. Counterpart Set to Discuss Durum Issue" *The Star Phoenix* (7 January 1994); Vern Greenshields, "Canada-U.S. Durum Deal Near: Trade Action Over Wheat Exports May Be Avoided, Say Sources" *The Star Phoenix* (18 January 1994). Dan Zakreski, "Biting Image Sums Up Power Equation In Wheat War" *The Star Phoenix* (19 January 1994).

35. Canadian Press, "Senator Seeks 80% Wheat Import Cut" *The Star Phoenix* (25 January 1994).

36. *Supra* note 33.

37. Agriculture Minister Goodale in "Durum Fracas Could Lead to Trade War: Goodale Says Canada Prepared to Take Tough Defensive Posture" *The Star Phoenix* (29 March 1994).

38. "Consumers in both countries would likely pay more for pasta if no agreement is reached. Canadians could face higher prices for a variety of prepared foods from the United States, from breakfast cereal to frozen entrees, depending on how extensive the crossfire of duties becomes" in "Canada, U.S. Push Hard to Concluded Trade Deal" *The Star Phoenix* (6 April 1994).

39. "The talks disintegrated when [Canada's Trade Minister] MacLaren and Agriculture Minister Ralph Goodale would not agree to [U.S. Trade Representative] Kantor's demands to cap Canadian wheat exports" in "Canada-U.S. Talks on Wheat Imports Collapse" *The Star Phoenix* (16 April 1994). "Goodale Fears Trade War" *The Star Phoenix* (18 April 1994).

40. Vern Greenshields, "Audit Clears Canadian Durum Sales: But Montana Senator Still Sees 'Smoking Gun' For Dumping Penalties" *The Star Phoenix* (12 March 1994). The auditors were Arthur, Anderson and Company.

41. *Ibid.*

42. Canadian Press, "Rhetoric rising in U.S.-Canada Trade Dispute" *The Star Phoenix* (17 March 1994).

43. "Canada, U.S. Push Hard to Conclude Trade Deal" *The Star Phoenix* (6 April 1994).

44. Classic historical sources are: John Archer, *A Saskatchewan History* (Saskatoon: Western Producer Prairie Books, 1980); Royal Commission on Agriculture and Rural Life, Volumes 1-14, of which the most important for this essay are the volumes entitled, respectively, *Farm Income, Land Tenure, Agricultural Markets and Prices, Agricultural Credit, Crop Insurance, Home and Family in Rural Saskatchewan* (Regina: Queen's Printer, 1955); Gary Fairburn, *From Prairie Roots: The Story of The Saskatchewan Wheat Pool* (Saskatoon: Western Producer Prairie Books, 1984); Vernon Fowke, *Canadian Agricultural Policy* (Toronto: University of Toronto Press, 1949); Seymour Martin Lipset, *Agrarian Socialism*, 2d ed. (New York: Anchor Books, 1960); Charles F. Wilson, *A Century of Canadian Grain* (Saskatoon: Western Producer Prairie Books, 1978).

45. Flour inspectors were legislated in Upper Canada in 1801; their powers enhanced in 1820: *Amendment to Act to appoint Inspectors of Flour*, 1 Geo. IV, Chap. V, 1820. In 1835, legislation was passed standardizing the measure of a bushel on the basis of its weight rather than its volume, with a bushel of wheat declared to weigh sixty pounds, barley forty-eight, and oats thirty-four pounds. *An Act to establish a Standard Weight for the different kinds of Grain and Pulse, Statutes of the Province of Canada*, 5 Wm. IV, Chap.7, assented to 16 April, 1835. In 1853, other crops were similarly standardized. *An Act to establish a Standard Weight for the different kinds of Grain and Pulse, Statutes of the Province of Canada*, 16 Vict., 1853, c.CXCIII. The first grades for wheat were established in 1863, 26 Vict., Cap III, assented to 5 May, 1863. (Extra Spring, for example, was to be "sound, plump and free from admixture of other Grain, and weigh not less than 61 lbs per bushel"). Provision was also made for inspectors to approve grade samples, to enforce standards and arbitrate disputes.

46. *"An Act to make better provision, extending to the whole of the Dominion of Canada, respecting the Inspection of certain Staple Articles of Canadian produce."* S.C. 1874, c.45.

47. In 1886, Canada added Boards of Examiners for each of the main grain cities to appoint inspectors, and a federal Chief Grain inspector to arbitrate disputes. In 1889, separate samples were developed for Western Canada; S.C. 1889, c.16. In 1892, provision was made for years in which there were no standard samples due to weather, S.C. 1891, c.48. Inspection procedures were also enhanced: *ibid.* 1892, c.23. In 1899, the wording of grades were revised, and provision was made for all grain grown in the Western Division must be inspected at Winnipeg. S.C. 1899, c.25.

48. Bill No. 19, February 14, 1898.

49. Bill No. 15, 1899.

50. S.C. 1899, c.25.

51. Canada, Royal Commission on the Shipment and Transportation of Grain. A Royal Commission is a group of citizens appointed by government to investigate and report to government on controversial matters of public interest.

52. By the end of the nineteenth century, the U.S. had developed an elaborate regime to regulate "corporations affected with a public interest," most notably public utilities. See M. Horowitz, *The Transformation of American Law* (Cambridge: Harvard University Press, 1977).

53. *Report and Evidence of the Royal Commission on the Shipment and Transportation of Grain* 63 Victoria, Sessional Paper No.81a, March 19, 1900.

54. S.C. 1900, c.39 (assented to 7 July 1900).

55. S.C. 1902, c. 19 (assented to 15 May 1902).

56. L.A. Wood, *A History of Farmer's Movements in Canada* (Toronto: Ryerson, 1924) at 178-79.

57. See discussion in Wilson, *supra* note 44 at 35 and Archer, *supra* note 44 at 123.

58. *Amendments to Manitoba Grain Act*, S.C. 1903, c.22.

59. *An Act to Amend the Canada Grain Act*, S.C. 1908, c.36 & c.45 (assented to 20 July 1908).

60. Wilson, *supra* note 44 at 41.

61. The issue was the Reciprocity Agreement with United States. Western farmers supported free trade but eastern industrialists opposed it.

62. The litany of complaints resembled earlier charges, that the Grain Exchange was driving down prices; that agents were selling producers' grain that had been consigned for storage; that elevator companies were charging excessive carrying fees; that private terminals were mixing grades of grain. See Wilson, *supra* note 44 at 192.

63. *An Amendment to the Canada Grain Act*, S.C. 1919, c.5.

64. *The King* v. *Eastern Terminal Elevator Co.*,[1925] S.C.R. 464, aff.[1924] Ex.C.R. 167.

65. *Canada Grain Act*, S.C. 1925, c.33. Mr. Justice Duff in *Eastern Terminal* had suggested that this would be a valid constitutional way for the federal government to control elevators.

66. The Turgeon Commission, *Report of the Royal Inquiry Commission* (Ottawa: King's Printer, 1925). For a fuller description of the Commission see Wilson, *supra* note 44 at 205*ff*.

67. *An Act to Amend the Canada Grain Act*, S.C. 1927. This provision was in response to pressure by the co-operative Wheat Pools which were formed in 1923-24 in Saskatchewan, Manitoba and Alberta to market members' grain.

68. *An Act to Amend the Canada Grain Act*, S.C. 1929, c.53.

69. *Canada Grain Act*, S.C. 1930, c.5. The Act was consolidated and updated in 1970. *Canada Grain Act*, S.C. 1970, c. G-16.

70. Canada removed import licences in 1989 as per Article 705 of the FTA.

71. In 1991, members of the Western Barley Growers Association sued the Canadian Wheat Board, alleging that the Board's practice of off-setting revenues from sales of high quality grain with revenues from sales of lower quality grain in determining whether there had been a net loss in the pool accounts (which should be made up by the Government of Canada) was discriminatory to high quality producers. The Court did not agree. *Lacey et al* v. *Canada* (1991), 127 N.R. 312 (F.C.A.) In contrast, in 1993, the prairie wheat pools challenged federal regulations removing barley from the jurisdiction of the Canadian Wheat Board as *ultra vires*. In an unpublished judgment July 20, 1993, Scheibel J. of the Saskatchewan Court of Q.B. found the regulations valid. The Saskatchewan Court of Appeal held that the Queen's Bench court did not have jurisdiction. The Federal Court found that although the *Canadian Wheat Board Act* provided authority to deregulate barley sales, it did not provide authority to partially deregulate sales as was done by Section 15 and 16.1 of Canadian Wheat Board Regulations, Order in Council PC 1993-1399, June 21, 1993. *Saskatchewan Wheat Pool* v. *Canada* (Attorney General), [1993] F.C.J. No. 902. The federal government withdrew the regulations. The judgement has been appealed to the Federal Court of Appeal. Meantime, the Court denied an injunction to prevent the federal government withdrawing the regulations. *Canada (Attorney General)* v. *Saskatchewan Wheat Pool*, [1993] F.C.J. No. 943 (F.C.A.); (Cargill Limited and United Grain Growers Limited, Intervenors).

72. *Saskatchewan Wheat Pool* v. *Canada (Attorney General)*, [1993] F.C.J. No.902 (F.C.A.).

73. Current provisions are included in the *Western Grain Transportation Act*, S.C. 1980-81-82-83, c.168.

74. The literature on "soft law" is large, including I.Seidel-Hohenveldern, "International Economic Soft Law" (1979) 1982 II Recueil des Cours 182; and in Canada, R.R. Baxter, "International Law in 'Her Infinite Variety'" (1980) 29 Int'l and Compar. L.Q. 549; T. Gruchalla-Wesierski, "A Framework for Understanding Soft Law" (1984) 30 McGill L.J. 37; Johnathon Carlson, "Hunger, Agricultural Trade Liberalization and Soft International Law: Addressing the Legal Dimensions of a Political Problem" (1985) 70 Iowa L. Rev. 1187; and more recently, Oscar Schacter, "United Nations Law" (1994) 88 A.J.I.L. 1; Geoffrey Palmer,

"New Ways to Make International Environmental Law" 86 A.J.I.L. 259.

75. T. Gruchalla-Wesierski, *ibid.* at 66.

76. H.S. Patton, *Grain Grower's Co-operation in Western Canada* (Cambridge: Harvard University Press, 1928) at 30.

77. T. Gruchalla-Wesierski, *supra* note 74 at 48.

78. Jonathon Carlson, *supra* note 74.

79. Perhaps this attitude reflects a consciousness illustrated by advice from a former Vice-President of Cargill to Canadian farmers: "The Yankee trader is a formidable opponent ... it is the fine print, not grand talk, is what really counts in such deals. Integrity and the spirit of intent are worthless words." "Farmers Must Learn Trade Game: Grain Trader" *The Star Phoenix* (8 January 1994).

80. *Vienna Convention on the Law of Treaties* (1969) 1155 U.P.N.T.S. 331, In Force 1980. Specifically, Section 3, Articles 31 and 32.

81. "There are some in the U.S. who would appear to be operating on the assumption that they are quite at liberty to take whatever punitive or restrictive action against Canada. They seem to believe their conduct would have no consequences for them," according to Minister of Agriculture Goodale. See "Durum Fracas Could Lead to Trade War: Goodale Says Canada Prepared to Take Tough Defensive Posture" *supra* note 22.

82. A. Schmitz, a University of California Agricultural Economist, says: "What scares me is comparing the American market with free enterprise. It's one of the most socialistic markets ... the richest farmers in America believe in co-operatives." "Monopoly: The Wheat Board Game" *The Star Phoenix* (25 February 1994). Other academic authors agree. See, for example, C. Carter, A. McCalla & A. Schmitz, *Canada and International Grain Markets: Trends, Policies and Prospects* (Ottawa: Economic Council of Canada, 1989) at 40: "Canada has historically not subsidized grain production to nearly the same extent as the United States or the European Community. It has been more "market-oriented" — as much because of budget constraints as philosophical commitments."

83. As GATT ends supply management, fragile inter-provincial truces on the sharing of the Canadian market in dairy, eggs and poultry, threaten to disintegrate into bitter disputes among producing provinces. "Alberta Minister Threatens Trade War Against Saskatchewan" *The Star Phoenix* (19 April 1994); "Provincial Trade Barriers Thorny Issue" *The Star Phoenix* (19 April 1994).

84. Saskatchewan Premier Romanow's public response to the durum dispute has been limited to one comment: "I can't expect any more than what is in fact happening, which is namely [Prime Minister] Chrétien is speaking out hard with the U.S. people on this issue and that's A O-K with me." "Durum dispute on Chrétien's agenda" *The Star Phoenix* (5 March 1994).

85. The combined rural and urban population of Saskatchewan constitutes only four percent of the population of Canada.

86. Canadian pasta makers might be helped; however, Canadian consumers would pay the price of "double" tariffs. An American import quota would make durum more expensive to U.S. pasta makers. A Canadian retaliatory tariff on pasta coming in to Canada would further increase the price of pasta in Canada. "American Pasta Entering Sask. Vexes Minister" *The Star Phoenix* (10 March 1994); "Canada, U.S. Push Hard to Conclude Trade Deal" *The Star Phoenix* (6 April 1994).

87. Prime Minister Chrétien, in his letter to President Clinton, referred to "Canadian participation in cruise missile testing and in the international space station." *Supra* note 24.

88. Prime Minister Chrétien's state visit to Mexico in March focused on trade issues and the benefits of investment, "PM Just 'Rubbing Shoulders' with Mexican People" *The Star Phoenix* (26 March 1994) despite the fact that the country's presidential heir-apparent, Luis Donaldo Colosia, was assassinated the day Mr. Chrétien arrived. "Assassination in Mexico: Presidential Candidate Gunned Down in Tijuana" *The Star Phoenix* (23 March 1994).

89. See, for example: "Theology and Revolution in Mexico" (1994) 23 Sojourners 9; Jim Carlton, "Not-So-Jolly Green Giant Casts a Long Shadow" *The Globe and Mail* (24 September 1992) C5.

90. See, for example: "NAFTA spurs fear of pollution nightmare: Babies Born Without Brains Are Thought to be a Result of Industrial Contamination" *The Star Phoenix* (9 October 1992); "Public Must Look at Ecology Issues Ignored by NAFTA" *The Star Phoenix* (24 February 1994); "Poor Not Biggest Victims of NAFTA" *The Star Phoenix* (20 January 1994).

91. The December 1993 GATT, signed April 15 in Marrakesh, Morocco, goes further in both these areas than either the FTA or NAFTA in creating specific obligations to reduce domestic and export subsidies. *Agreement on Agriculture*, Article 6 specifies domestic subsidies which are subject to reduction commitments, and commits Parties to an individualized total support level and reduction schedule, from which developing countries are exempted. Articles 8-12 commit Members to reduction commitments on all export subsidies, dumped commodities, supply management, and transportation subsidies. Members agree to disciplines to govern export credits and international food aid.