MULTILATERALISM OR BILATERALISM IN THE NEGOTIATION OF TRADE-RELATED INVESTMENT MEASURES?*

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I. INTRODUCTION

The increased integration of the world economy in the postwar period has led many students of both international relations and public policy to focus on the extent to which increased economic interdependence has limited or constrained the decisions of state policymakers. Globalization, the buzz-word of the nineties, describes a process of increasingly integrated systems of production within firms that cross state boundaries and, along with massive flows of capital, have caused state decision-makers to lose control of their economies.[1] But globalization itself has been the result of a gradual and selective process of state removal of barriers to the international movement of goods and capital and the creation of a set of shared norms, expectations and rules regarding international economic

*The Uruguay Round of negotiations occurred under the auspices of the General Agreement on Tariffs and Trade. The Final Act of the Uruguay Round, signed by participants in April, 1994, ended the negotiations and created the World Trade Organization which came into being on January 1, 1995.

transactions. International relations scholars refer to the latter as "regimes." These regimes have generally been viewed as the result of the efforts of the most powerful postwar economy, the United States, to entrench the acceptance of a set of liberal values supportive of capitalism and the freer movement of goods and investment capital. With the decline of the dominance of the United States in the international economy many American scholars have raised the question of the future of the international economy without U.S. hegemony. Some, such as Robert Keohane,[2] have argued that the presence of international rules and the interdependence of states have altered states' interests in international cooperation, and such cooperation will continue despite declining U.S. hegemony. Thus he sees an autonomous role for regimes in shaping state behavior and the interests of states in creating and maintaining regimes. This autonomous impact of regimes has become the focus of a great deal of research. Some scholars have sounded a more cautious note and have pointed to the need to recognize the interests which regimes serve and the extent to which power relations among international actors may shape their content, given that many rules emerge as a result of inter-state bargaining within international organizations.[3] This article addresses a number of questions regarding power relationships and regimes by examining inter-state negotiations on investment rules within international organizations, in particular the General Agreement on Tariffs and Trade (GATT) which became, in 1995, The World Trade Organization (WTO).

Specifically, the essay seeks to answer two questions: How do states define their interests in a particular regime and how may those interests change over time? To what extent are regimes merely a reflection of power relationships among actors in the international system or a mechanism to restrain the most powerful actors through the creation, via multilateral negotiations, of a rules- based system?

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II. CANADA, MULTILATERALISM AND INTERNATIONAL REGIMES

From Canada's perspective the question of regimes and power relationships is extremely relevant. Because of Canada's intense economic links to the United States, especially its trade dependence and the enormous size disparity of the two economies, how to deal with the United States in the case of economic conflicts is a perennial question. Much of the scholarly analysis of Canadian foreign policy in the postwar period has focused on the supposed benefits of multilateralism.

Multilateralism has been described as a cornerstone of Canadian foreign policy in the postwar period.[4] As the national debate over the 1987 Free Trade Agreement indicates, multilateral economic institutions have even been seen to be an alternative approach to resolving economic disputes with the United States, and one which held less risk of U.S. domination over Canada in comparison to the bilateral approach. It has often been argued that such organizations provide the opportunity to resolve conflicts within a broader context where direct United States pressure on Canada cannot easily be brought to bear because other members and their interests may be supportive of Canada's position.[5] Moreover, to the extent that the rules and norms developed in such organizations can bind or restrain the United States, they may afford an opportunity to influence U.S. behavior which bilateral negotiations could not.

Such an approach sees regimes as the outcome of conscious efforts of state actors as agents to create rules through bargaining and negotiating within international economic institutions.[6] The rules, in turn, will shape behavior. This approach raises the question referred to above of whether regimes reflect a distribution of power or have a transformative effect on power-based relationships. One view would suggest that "dominant states write the rules that conform to their interests and guarantee compliance through the exercise of power."[7] Thus regimes may serve as a mechanism for legitimizing hegemonic power through the internalizing of norms.[8] Dominant states may see international organizations as instruments through which they can pursue their interests.[9] The postwar system of liberal multilateralism in economic exchange is often viewed in this manner, reflecting a U.S. policy preference to build a normative postwar consensus on economic exchange, rather than using coercion to maintain the system.

In contrast, subordinate or less powerful actors such as Canada may view the negotiation of international regimes as an opportunity to achieve objectives which may include challenging prevailing norms and transforming power relations. This view is at the basis of the belief that multilateralism may provide a counterweight to U.S. bilateral dominance. But is this the case, or do such organizations afford the United States an additional opportunity or tool in its effort to influence Canada's foreign direct investment (FDI) regime?[10] There may be a danger, as Keating has suggested, that Canada's strong commitment to multilateralism as a process and a desire for inclusion has sometimes caused it to undertake commitments which may sacrifice specific interests in the name of safeguarding a process.[11]

Has the utility of multilateralism as a means of advancing Canadian foreign policy interests been overblown, or has it proven to be effective? Increasingly, scholars of Canadian foreign policy are starting to reassess the extent to which multilateralism has been a myth[12] and whether, in fact, bilateralism has been the norm. Clearly, this accepted wisdom needs to be more carefully assessed. Despite the assertion of the importance of multilateralism and its potential for lessening U.S. dominance on economic issues, there has been relatively little examination of the extent to which Canada has been able to use its membership and activity in international organizations to effectively offset the bilateral dominance of the United States and achieve its objectives in specific economic issue areas by influencing the creation of international economic regimes. Moreover, there has been relatively little study of how Canada's interests in regime creation have been defined and what influences change those interests over time. The case of foreign direct investment can shed some light on both the multilateral argument in Canadian foreign policy and the issues of how state interests in regimes emerge and change. In order to do that, however, we need to examine the actual pattern of influence on the investment issue within organizations and examine how the emerging international economic regime was shaped.

Thus the first question is whether or not Canada has been able to shape the international investment regime which has been emerging since the 1970s.[13] Or has the United States used its influence in international organizations to create a regime which serves its interests and constrains Canadian behavior that challenges those inter-

ests? The second question is whether the impact of whatever regime emerges actually constrains or enhances the Canadian state's choice of policy instruments which it could use to manage FDI. In order to answer these questions we need to examine three issues. First, what were the Canadian state's articulated preferences for an international investment regime within a negotiating context? Second, did the investment regime which emerged as a result of multilateral negotiations fit with, or conflict with, Canadian policy preferences? If it did conflict, to what extent, in Keohane's terms, did Canada undertake "inconvenient commitments"[14] which might constrain the choice of policy instruments for national decisionmakers?

This article examines these questions through a case study of Canadian involvement in the negotiation of an agreement on trade related investment measures (TRIMs) during the Uruguay Round of multilateral trade negotiations. It begins by examining the context out of which the TRIMs negotiations emerged, including previous efforts to negotiate investment rules at the United Nations and the OECD in the 1970s, the United States' and Canada's evolving investment objectives in the 1980s, and the resulting struggle over the trade negotiating agenda in the lead up to the Uruguay Round. These sections are followed by an examination of the actual negotiation process in the 1986 to 1992 period, with most attention focused on 1988 to 1990 when substantive negotiations took place. The concluding section examines the TRIMs agreement from the perspective of both the United States and Canada and offers a preliminary assessment of the extent to which the GATT, as a multilateral context, facilitated the achievement of Canadian investment objectives. Throughout the negotiating period Canada and the United States were engaged in bilateral, and later, trilateral trade talks which included important investment provisions. This article also examines the extent to which these agreements shaped negotiations at the GATT and contrasts the two negotiating contexts to help explain the rather different and much more wide-ranging investment agreements that emerged as part of the Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA).

III. INTERNATIONAL ORGANIZATIONS AND INVESTMENT ISSUES: THE UN AND THE OECD

Canada was actively involved in efforts to negotiate investment issues in international organizations in the 1970s. It had raised

concerns internationally about the problems of multinational enterprises (MNEs) on various occasions at the OECD in 1968 and later in 1972. The Gray Report had raised the issue of the establishment of an international code dealing with multinational enterprises and foreign investment.[15] It would be to Canada's benefit, the Report said, if a code could be established which would place limits on the extraterritorial application of home state laws, provide for fair and equitable treatment of MNEs, and offer international recognition of the right of host countries "to fix rules to ensure adequate domestic control of the economy."[16] But the Report made it clear that, in the negotiation of any such code, Canada would not be able to accept an obligation to provide national treatment to foreign firms.[17]

Yet at the OECD in the 1970s and later in the GATT in the 1980s Canada found itself in the role not of initiating proposals on the foreign investment regime but of responding to U.S. initiatives and pressure, some of which were more intense than in the bilateral context.[18] Canada was repeatedly put on the defensive on investment issues in both the OECD in the 1970s and the GATT in the early 1980s and faced unpleasant trade-offs of investment controls for other foreign policy or trade objectives.

In the case of the OECD the investment issue was dealt with in the early 1970s largely at the behest of the United States, supported by other capital exporters. It also took place within an organizational context, dominated as it was by large capital exporters, which was basically hostile to national controls on foreign investment. The OECD membership includes European and North American countries as well as Australia, New Zealand and Japan[19] and, most recently, Mexico. With a few exceptions in southern Europe, all in the 1970s were advanced, industrial capitalist economies, both large and small. From its very inception the organization reflected the consensus of liberal-democratic capitalist states on which its membership is based. In particular its goals included "efforts to reduce and abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalization of capital movements."[20]

But the structure of influence is less clear. While all members are equally represented at the ministerial level of the council, which renders the final decisions of the organization, the actual agenda and work program are usually based on an informal consensus but have, in practice, been heavily influenced by the largest economic actors in

conjunction with the permanent secretariat of the organization.[21] Much of the work of the OECD since its founding has involved economic policy coordination of member states.[22] Since the late 1960s and early 1970s when the developing countries began to challenge the prevailing economic order, the organization has been used very consciously by its members to develop a policy consensus and coordinated positions on major international economic issues on the part of advanced industrial states, prior to negotiation in other intergovernmental economic organizations with broader membership such as the GATT, the World Bank or the United Nations (UN).

In addition to coordinating positions the organization has also endeavored to create norms and rules governing international economic exchanges, in line with its founding goals, through the development of various codes of conduct. The code on capital movements was created coincidentally with the establishment of the organization in 1961. The intent was to encourage member states progressively to remove all restrictions on the international movement of capital over time. Despite its enthusiastic participation in the OECD, Canada was on the defensive almost from the start on investment issues because of its position as a host to large amounts of FDI. Pressure began in 1961 when Canada refused to sign the OECD code on capital movements despite the strong push from the United States to get all members on board.[23] Not withstanding these pressures the policy of non-adherence remained in place until the early 1980s.

While the code covered capital movements, it did not address the issues of the rights and obligations of foreign investors or the behavior of governments toward foreign subsidiaries operating within their economies. The immediate impetus to address this issue came from outside the OECD. The efforts of third world countries to restructure the global economic system and limit the flagrant abuses of MNEs in a number of countries through their voting majority in the UN General Assembly had led to the establishment of a Group of Eminent Persons in 1972 to study the issue of transnational corporations and their impact.[24] With the release of their report in 1973 it was clear that UN action on a code was imminent.[25] In order to counter the prospect of a code which did not represent the interests of capital exporters emanating from the UN, the United States began pushing other OECD member countries to address the issue.[26] In May, 1973, largely at U.S. insistence, the OECD ministers initiated a work program for the OECD on the issue designed, according to the United

States interpretation, to "put a fence around the use of governmental policies that distort patterns of investment and trade"[27] and to explore the "elaboration of guidelines and consultation procedures with respect to the treatment governments give to foreign investors."[28]

While Canadian officials were supportive of efforts to deal with questions relating to the standards of behavior of MNEs and the competitive use of incentives to attract investment, they were concerned about the principle of national treatment.[29] In the final package Canada achieved only some of its objectives, including the elimination of a reference to the norm of national treatment and the goal of rolling back existing exceptions, as a result of intensive negotiation. In contrast, the United States retained the commitment to national treatment in the form of a declaration and inserted under the record of the council's decisions the objective of extending the application of national treatment.

The Guidelines for MNEs presented few problems since they were generally consistent with Canada's principles of international business conduct (the Gillespie Guidelines) issued in July, 1975. The declaration on national treatment, however, presented a real problem,[30] and the final decision to lodge a reservation on the national treatment portion only partially resolved it. Canada took the step of reserving its position by way of a statement issued by the secretary of state for external affairs after the June 21 ministerial meeting in Paris. The statement noted "that Canada will continue to retain its right to take measures affecting foreign investors, which we believe are necessary given our particular circumstances."[31] In the case of the 1976 Declaration and the issue of national treatment the negotiations became, in effect, a bilateral Canada-US conflict. Fearing isolation within the organization Canada signed the declaration, leaving the status of its adherence to the national treatment norm ambiguous.

The UN provided a very different context for negotiations on investment in the 1970s where sovereignty afforded equal membership rights and allowed the Group of Seventy-Seven to dominate the agenda and push for the negotiation of a code. Because of the broad-based membership and the wide divergence of interests between capital importing and exporting countries, Canada was under much less direct pressure from major capital exporters. At the same time views within the UN have been so much more fragmented and the emphasis so heavily on prolonged procedural debates that no agreement on a code has, in fact, been reached.

Canada was able to carefully balance its ambiguous position as an advanced industrial host and home country, but the process of negotiation ultimately failed. While host state influence was clear, it was of a negative sort and insufficient to produce a code, never mind one that might effectively bind either MNEs or home states. By the 1980s the United States was aggressively pushing for protection of the rights of foreign investors. No agreement became its preferred outcome in the UN context as the United States shifted its initiatives on investment issues to bilateral approaches and other international organizations where it had a higher probability of controlling the outcome. One such organization was the GATT.

IV. U.S. AGENDA-SETTING: THE GATT AND TRADE-RELATED INVESTMENT MEASURES

Including investment within the GATT was attractive to the U.S. because the GATT, unlike the OECD, provided for the enforcement of rules by sanctioned trade retaliation on the part of members. Such a situation affords large market economies, like the United States, Japan and the European Union, major influence because of the attractiveness and large size of their markets. Sanctions which deny access to their trading partners can be very effective. If the GATT or its successor, the WTO, were to adopt rules on investment measures which reflected the interests of capital-exporting home countries, it would have major implications for host countries. Host countries, especially if highly dependent on market access to the large economies, would find the costs of using prohibited measures to control FDI coming from the large economies very high. As such these rules would form a major constraint on host states' choices of policy instruments.

The United States' concerns about the increased tendency of host states to use selective controls over incoming investors to extract performance concessions had been growing. Complaints from firms and a number of surveys of the U.S. department of commerce (1977 and 1982)[32] indicated that local content requirements, export commitments, technology transfer requirements, as well as other controls over remittances and foreign exchange, were being imposed on U.S. firms, especially in developing countries. In 1982 the International Trade Commission initiated a study of the trade impact of a number of these measures. The subsequent 1983 administration statement on investment policy and the 1984 Trade Act[33] reinforced the linkage of trade and investment issues in U.S. policy.

The issues of services, another priority for the U.S. at the GATT, also had an investment dimension. Although the U.S. enjoyed a trade surplus in services, several large U.S.-based service industries felt prevented from further expansion abroad because of foreign state regulation of service industries which denied them market access.[34] An important aspect of attaining such access was international recognition of a right of establishment for foreign-based firms offering non-tradeable services. This clearly had direct implications for host state rights to control or limit the entry of FDI.

In September, 1981, the United States proposed a work program to the Consultative Group of Eighteen of the GATT[35] which included both trade in services and trade-related performance requirements imposed on foreign investors. The intention, according to a senior treasury official, was ultimately to address a list of investment-related concerns through the GATT that included the right of establishment, national treatment and nationalization. For the United States the GATT was the preferred venue for the negotiations because, unlike the OECD, its rules could be made binding and its members included developing countries, the chief abusers of trade-related investment measures in the U.S. view.[36] Clearly the United Nations conference on trade and development and the UN commission on transnational corporations were less desirable because of the dominant role played by developing-country members. These members, in fact, strongly opposed the U.S. work program at the September, 1981, GATT meeting.

United States officials persisted. In March, 1982, Ambassador Brock made it clear to the U.S. senate that both negotiations on trade in services and trade-related investment measures were priorities for the November, 1982, GATT ministerial meeting.[37] Specifically, the United States would seek "a political commitment from ministers to initiate a work program on investment policies with a particular focus on trade-distorting practices such as performance requirements."[38] In the case of services, which were "a top priority," the United States wanted to obtain specific commitments to a work program that would examine the GATT articles and codes and their applicability to services within a specified time frame.

Canada reacted cautiously to the U.S. initiatives on services and investment. The trade minister indicated Canada's willingness to "study the problems relating to trade in services in the GATT" and indicated that it was in the process of defining its interests on the

issue.[39] On investment measures Canada argued that any proposed program of study would be "unbalanced unless it were to address, at the same time, the behavior of multinational corporations."[40] Canada's trade priorities, as outlined by the minister of state for international trade in June, 1982,[41] were more concerned with negotiated limits on the use of safeguards (emergency measures against injurious imports), strengthening the dispute settlement mechanism, agricultural trade (especially restraints on European Community export subsidies), improved foreign market access for processed resources and the strengthening of some existing GATT codes, for example, the Aircraft Agreement.

At the November, 1982, meeting, which Canada chaired, opposition to the United States' proposed work program was very strong from several developing countries, particularly in the case of services and investment. Brazil and India led the opposition to any discussion of investment issues. In the case of services there was a fear on the part of developing countries that they would be forced to open key economic sectors such as banking, communications and transportation to foreign companies in return for access to developed country markets for their goods.[42] A limited compromise on services was ultimately achieved. The final declaration merely referred to national studies on services to be undertaken by members. There was no mention of investment issues at all in the final declaration.[43] The work program which was agreed to included measures still unfinished from the 1979 Tokyo Round such as safeguards, agriculture, a review of certain codes and dispute settlement. A review on progress was scheduled for 1984.

The results of the meeting were a partial defeat for the United States.[44] Ambassador Brock made clear his disappointment on the investment issue and warned that the United States would "protect its interests" and, if necessary, pursue its "legitimate complaints perhaps in a more unilateral and confrontational manner than would have occurred, if the GATT ministerial [talks] had made more progress in this area."[45] The United States thus continued a policy of both strengthening its pursuit of service trade and investment objectives on a bilateral basis while also continuing to work multilaterally, especially in the GATT, to gain acceptance for its agenda.

The U.S. sought to establish that host state efforts to extract enhanced performance from multinational enterprises through increased local sourcing, processing and exports constituted, in effect,

a violation of several articles of the GATT.[46] Thus the dispute with Canada over the operation of the Foreign Investment Review Agency (FIRA) provided a useful case with which the United States could test the limits of the GATT's rules and apply additional pressure on Canada to eliminate performance requirements from the screening process.

If the United States had lost at the GATT it would have severely weakened U.S. multilateral efforts and it would have provided strong international recognition of the rights of host states to impose conditions of access on foreign investors in an effort to promote domestic economic development.[47] Canada, along with a number of developing countries, had resisted American efforts to have the GATT launch a formal study of TRIMs in 1982. Canada argued for a broader approach to investment which also considered the concerns of host countries with issues such as transfer pricing. But Canada had also long supported the strengthening of the GATT dispute settlement process to make it binding upon the parties involved. In Canada's view a stronger dispute settlement process in the GATT would help smaller states offset the bilateral asymmetries in trade disputes. Thus, although there were risks, Canada agreed at the outset to be bound by the results of the panel decision on the operation of FIRA. The U.S. began consultations with Canada on FIRA under Article XXIII in January, 1982. When these did not resolve the dispute the United States initiated its case. In March, 1982, the GATT Council agreed to establish a three-member panel to hear the case. Several other GATT members from less developed countries, particularly Argentina, expressed doubt that the GATT had any competence to deal with investment questions.[48] As part of its strategy the United States complaint against Canada was confined to two very specific trade-related issues involved in the administration of the Foreign Investment Review Act and did not question Canada's right to screen investment.

The U.S. complaint centered around the specific undertakings investors made to FIRA in order to establish the nature of the significant benefit their investment would bring to Canada. Once an investment was approved, these undertakings became binding on the firm and were monitored by FIRA. The United States argued that such undertakings, which often included commitments to purchase Canadian goods, to source through Canadian channels, or to manufacture goods in Canada to displace imports, violated sections of

Article III of the GATT which requires contracting parties to give no less favorable treatment to imported products than similar products of national origin. FIRA undertakings also dealt with exports and in these instances, the United States argued, Canada was violating Article XVII which prohibited government interference with the operation of commercial considerations. The inflexibility of binding commitments related to export targets, the U.S. contended, could lead to dumping of products abroad.

In its response, Canada questioned the competence of the GATT to deal with the investment issue and argued that undertakings made by investors involved no coercion on the part of the agency.[49] Canada's submission also pointed to the agency and the government's flexibility in renegotiating undertakings, especially when, because of changes in market conditions, firms were unable to live up to previous commitments.

In July, 1983, the GATT panel found, in the case of undertakings related to sourcing requirements, that FIRA's administration did indeed violate sections of Article III. In the case of exports, however, the finding went against the United States. Given the importance of Canadian sourcing undertakings in most FIRA cases and the generally weaker U.S. argument and evidence in the case of exports, the ruling was clearly a defeat for Canada. The full GATT council upheld the ruling in 1984. Although FIRA officials claimed that, in fact, the decision would in no real way alter FIRA's behavior, a change was made within FIRA's administration such that any future undertakings regarding sourcing included the commitment by firms only to offer a "full and fair opportunity to Canadian suppliers."[50]

Thus by 1986 several developments had strengthened the prospect for trade in services and investment issues to become an accepted part of future GATT negotiations. The United States had been at least partially successful in its case against FIRA at the GATT, a case which had been specifically undertaken to test the limits of the applicability of GATT articles to investment issues. At the same time some of the opposition from developing countries to any discussion of the investment or services issues had begun to fragment. This was partly because of some divergence of interest between certain newly industrializing countries and other developing countries, increased understanding of the role of services in trade, and because U.S. bilateral pressure on some countries had been effective. Moreover, the United States itself was willing to compromise somewhat on its

demands. By 1986 Canada's position had also shifted, reflecting the loss of the GATT case in 1983 and a shift in its own domestic FDI regime to which we now turn.

V. CANADA'S CHANGING INVESTMENT INTERESTS

As a result of lower tariff barriers brought on by the Tokyo Round of negotiations, declining capital inflows and increasing capital outflows, Canadian policy on FDI began to change in 1982. Declining trade barriers and the adjustments required by a more open international economy and globalized production convinced decisionmakers that Canada would need more capital. By the mid-1980s Canada's share of global FDI flows had declined significantly from over 18 per cent in the 1970s to under 10 per cent.[51] Foreign ownership levels had also slowly declined from their peak of 36 per cent in the early 1970s to about 24 per cent of corporate assets before levelling off. Canada's role as capital importer had also been evolving and by the mid-1980s it had also become a capital exporter as Canadian direct investment abroad (CDIA) surged ahead of incoming FDI. Canadian direct investment abroad grew at rates in excess of 20 per cent in the 1978-82 period, and by 1988 Canada had invested over $75 billion abroad and thus had an interest, as a capital exporter, in eliminating barriers to CDIA.[52] The declining inflows and strong outflows of Canadian investment were perceived as evidence of Canada's declining attractiveness as an investment location and were seen to erode Canada's power to negotiate with foreign investors, the major premise upon which the operation of FIRA had been based.[53] The combination of strong U.S. opposition to FIRA and the criticism of a more assertive, organized and internationally-oriented Canadian business community reinforced the view that FIRA was deterring new investment. Legislation was introduced in November, 1984, eliminating the screening of new investment and creating Investment Canada with a mandate to vigorously promote Canada as a desirable investment location. But as a result of the sensitivity of the new Conservative government to continued high levels of foreign ownership, investment screening for takeovers of Canadian companies was left in place while special restrictions on investment in cultural industries and the oil and gas sector were instituted.

Coupled with the changing view of investment screening on the part of government officials came a preoccupation with access to the

United States market for exports and the need for better relations with the United States. By the mid-1980s about 75 per cent of Canada's export were going to the United States, a significant change from less that 60 per cent in the 1950s.[54] As a result of several U.S. trade actions against Canada in the early 1980s and a reassessment of Canada's trade options,[55] Canada embarked on bilateral trade negotiations with the United States in September, 1985, which sought to enhance the security of access to the U.S. market. Early on the United States indicated that investment issues, from its perspective, would be on the agenda. From the perspective of Canadian officials investment policy would have to take a back seat to the need to secure access to the U.S. market.

Along with its changing investment interests and its preoccupation with secure access to the U.S. market, Canada saw that the launching of a new round of trade negotiations in 1986 would address a number of key Canadian objectives, including trade in agriculture. Thus Canada supported the Uruguay Declaration of 1986 even though the agenda included both trade in services and trade-related investment measures. But the launching of negotiations was not achieved without the very strong opposition to the U.S. agenda again by a number of developing countries. Reacting to their concerns about the prospect of being pushed by developing countries into trading off services for market access for goods, GATT ministers agreed to the demand of many of these countries to completely separate the two negotiation processes. The second part of the declaration dealt with trade in services which were to be negotiated by a separate group. The aim was to "establish a multilateral framework of principles and rules for trade in services"[56] with a view to enhancing the transparency of barriers and ultimately removing them. The declaration thus allowed for the separation of goods and services in the negotiation process.

Investment measures were included as an area to be discussed in a review of GATT articles. But the commitment in the declaration was quite vague, stating only that:

> following an examination of the operation of the GATT articles related to the trade-restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects upon trade.[57]

A negotiating group was subsequently established to be chaired by Japan.

Finally in October, 1987, the negotiation of the Canada-U.S. Free Trade Agreement, with its inclusion of investment and services, indicated a further shift in Canada's position on international investment within multilateral organizations. It included a commitment made that Canada and the United States would endeavor, as part of the Uruguay Round, to "improve multilateral arrangements and agreements with respect to investment."[58] At the same time, by signing the FTA Canada had already agreed to significant limits on its ability to impose performance requirements on foreign investors, an issue which was soon to be raised at the GATT.

VI. NEGOTIATING TRIMs AT THE GATT

Negotiations on investment issues started in 1987 but began in earnest later in 1988.[59] Discussions initially centered around the contentious issue of defining the universe of investment measures which could be considered to be "trade-related," and in particular, trade distorting. Essentially the measures in question were host state policy instruments which sought to control the behavior of foreign investors. In particular, incentives, conditioned incentives, and performance requirements, typically imposed as a condition of access, were the instruments the U.S. wanted to eliminate.

But not all measures necessarily exert a trade impact. For example, one could argue that local equity requirements would not. Clearly, requirements to source locally or export certain amounts of goods would. The key dispute over TRIMs at the GATT centered around what measures would be prohibited and how their impact on trade would be determined. The United States pursued the objective of trying to identify a large number of FDI policy instruments which could be subject to retaliation based on their trade impact. Conversely, a number of host countries, primarily developing nations, totally opposed the inclusion of TRIMs in the GATT, or sought a smaller, definitive list of *a priori* prohibited measures confined to those instruments which had a clear, direct impact on trade. This was, in essence, the division which existed at the beginning of the protracted negotiations.[60]

Negotiations began slowly with a review of GATT articles and how they addressed the trade impacts of investment measures. Not until the meeting of June, 1988, did countries begin to make propos-

als. Essentially country positions, despite evolving international investment patterns of the 1980s, still reflected the perspectives of capital importers and exporters. Among the most aggressive in seeking to prohibit a broad group of investment measures were the United States, Japan and the European Community. In direct opposition was a group of developing countries, the G-10, led in part by India but broadly supported by at least a dozen other countries.[61] These nations directly challenged the competence of the GATT in this area. They sought to limit any restrictions to the trade impact of investment measures (to be established on a case-by-case basis) with no prohibition on the measures themselves. They also sought exemption from restrictions because of their status as developing countries. This group also argued that the problem as a whole was not significant, certainly in comparison to other trade objectives.

Canada[62] and a group of Nordic countries (Finland, Iceland, Norway, Sweden) were more or less in the middle of the two sides on the issues. In Canada's case it was clearly both an importer and an exporter of capital, but one that contained a high level of foreign ownership and a screening process which negotiated a limited range of undertakings, including some performance requirements, with investors. At the same time just as the TRIMs negotiations were getting under way Canada had agreed to limitations on a range of trade-related performance requirements in the FTA, while a few measures dealing with technology, world product mandates and measures requiring local equity were exempted. As a consequence Canada's position was somewhat constrained by the bilateral agreement, and officials acknowledged that if necessary they would have to accept a similar level of restrictions at the GATT.

Unlike the United States which, most observers agree, saw the TRIMs agreement as a high priority at the beginning of the negotiations, Canada did not.[63] According to an official briefing, Canada's interests would be "well-served by multilateral rules and disciplines which serve to maintain and strengthen an open global trade and investment environment" as a capital exporter. But the reality was that Canada's main investment relationship was with the United States and had been addressed in the FTA. Given the importance of others issues such as agriculture, market access, trade rules and services in the Uruguay Round, "TRIMs are not a Canadian priority."[64]

Canada's objectives were fairly modest, simply to "ensure that current practices are not at risk,"[65] and thus did not play a lead role in the negotiating group. Canada allowed the main protagonists to argue their respective cases, identifying and indicating where it had difficulties with various proposals until the process began to boil down to specific proposals and compromise texts in the fall of 1990 when Canada finally put forward a specific draft text.

First off the mark in the TRIMs group were the United States, Japan and the EC. These proposals shared a view that there was a list of investment measures that had *ipso facto* trade distorting effects which should be prohibited. The U.S. and Japan also wanted incentives which had conditions attached and trade impacts also included. Additional measures which had indirect effects, such as local equity requirements, should also be included. These proposals were broad and very inclusive, indicating anywhere between eight and fourteen measures for inclusion such as local content, technology transfer, local manufacturing, trade balancing requirements, foreign exchange restrictions, export requirements, and product mandates. Both countries also sought short phase-out periods for offending measures and limited exemptions or exceptions for developing countries.[66]

Preliminary proposals were met with strong opposition by a group of developing countries who argued that they were premature, given that the trade impact of TRIMs, or the relevance of GATT articles had not yet been clearly established. The focus, they argued, should be on the effects (on a case-by-case basis) and not the measures *per se*. The rights of states to regulate investment needed to be affirmed, restrictive business practices of large corporations addressed and exceptions for development purposes recognized. The two sides were very far apart. By the mid-term review held by ministers in Montreal in December, 1988, it was clear that limited progress had been made. Negotiators were directed to address four issues: identifying trade restrictive or distorting effects of TRIMs tied to existing GATT articles; other trade-distorting effects not covered by the existing GATT articles that may need to be addressed through new rules; development aspects; and implementation. Each side, however, focused on different aspects of the mandate.

Meetings in the spring and summer of 1989 included reviews of the empirical evidence of the TRIMs impact, provided mainly by the U.S, much of which was challenged by developing countries who questioned the overall impact of TRIMs on trade and how to separate

their impact from other factors. In July, 1989, the United States put forward a specific and comprehensive proposal followed by India, Japan and Mexico in September.[67] In November the Nordic states and the European Community also put forward specific proposals. The Community's proposals largely followed the other two large capital exporters but were less inclusive, excluding, for example, measures such as technology transfer requirements.[68]

It was the Nordic countries' proposal which really tried to bridge the North-South gap and was, in the view of Canadian officials, the most realistic as a vehicle for compromise, although Canada had other concerns with it. It advocated only a small number of prohibited measures with a clear trade link, such as local content or export requirements, a case-by-case approach based on the demonstrated effects for other measures, a lengthy phase-out period for offending measures and special treatment for developing countries. Submissions by India and Singapore questioned the whole applicability of GATT articles to TRIMs, since the articles deal with discriminatory trade measures themselves, not their effects.[69] They argued that existing GATT articles could always deal with the nullification or impairment of benefits which may result from TRIMs.

It was left to the chair of the negotiating group to attempt in various drafts to begin the process of trying to reconcile large differences. As time went on and pressures to have a text ready for the Brussels meeting in December, 1990, increased, negotiations intensified. Up until this point Canada had not developed a clear position or put forward a specific proposal, yet there were real concerns about many of the provisions of the draft proposals, especially those of the U.S. and Japan which were embodied in various compromise texts. Canada objected to the inclusion of local equity requirements, product mandates and local manufacturing in the list of prohibited measures, since they continued to be included in Investment Canada's negotiations of undertakings with firms acquiring Canadian corporations. Commitments to national treatment and non-discrimination were also unacceptable. Incentives, in Canada's view, were also best dealt with in the subsidies negotiations. Moreover, the case-by-case approach of the Nordic and developing countries was too open-ended from Canada's perspective. Canada feared that an effects test would allow for selective trade action on measures that had no direct trade link. Undoubtedly

Canada's experience of bilateral trade disputes with the United States played a role here.

Investment Canada was most concerned about Canada's slowness to develop a specific position on TRIMs beyond the general negotiating mandate which cabinet had provided in March, 1988. By May, 1990, a draft legal text was expected from the chairman of the negotiating group which, if based on the text of large capital exporters proposals, would "have severe repercussions" in Investment Canada's view. Even the Nordic text, officials feared, "would leave many of our policies and practices vulnerable to international challenge."[70] Thus they pressed for Canada to develop specific proposals if they hoped to shape any agreement prior to the Brussels meeting. By the fall Canada had staked out its own position in the form of a proposed text submitted as a possible basis of compromise prior to the Brussels meeting. The proposal focused on trade in goods and tied TRIMs to restrictions in Article III (national treatment of goods) and XI (limits on quantitative restrictions). It prohibited local content, import and export restrictions, and restrictions on access to foreign exchange, and was consistent with FTA obligations.[71] Investment Canada had done a survey of Canadian firms in 1989 and found remittances and exchange restrictions to be the main areas of business concern.

But the gaps between the two sides proved unbridgeable, and no text was put forward at the Brussels meeting except a list of areas of disagreement, as was the case in a number of other negotiating groups. Because of divisions on key issues such as agriculture, the trade talks were suspended while the secretary-general tried to find grounds to continue. In February, 1991, the number of negotiating groups was reduced to eight with TRIMs rolled into rule-making under Brazilian and Swiss chairs.

By this time the dynamics of negotiations had changed. Chairs and the secretariat were actively forging compromises in areas such as TRIMs at the negotiators level to try to clear them off the agenda while the big battles over agriculture and other issues were being fought at the political level. The Draft Final Act of December, 1991, reflected those efforts and included a lowest common denominator TRIMs text imposed by the chair.[72] This document text in essence remained unchanged and was embodied in the approved Final Act of 1993. It was a text that Canada could live with but was far from satisfying to the main protagonists. By 1991, however, none of the

negotiators felt that reopening the TRIMs compromise was worth the effort. The will to have an overall agreement in other key areas overrode any great desire to advance individual investment objectives.

There is little evidence of any attempt by the powerful capital exporters to link TRIMs to other issues and force concessions out of weaker opponents. In fact, many observers argue that the U.S. saw TRIMs as less of a priority by 1991. This was partly due, they suggest,to a preoccupation with other issues, a result of changing views on FDI as the U.S. itself became a net importer of FDI with pressures to develop further restrictions (like the Exon-Florio amendment of 1988).[73] It was also due to increased liberalization of FDI regulations in many developing countries. This was part of a process of trying to attract new capital as well as the direct result of pressures from the international financial institutions (the IMF and the World Bank) stemming from the debt crisis of the 1980s. The TRIMs problem was receding over time. Certainly strong developing-country opposition at the GATT also played a key role. Still, the United States did get TRIMs into the GATT and has made it clear it regards the short prohibited list of measures as only illustrative and will continue to pursue the issue in the WTO.

Thus the Final Act of the Uruguay Round negotiated in December, 1993, resulted in additional rules on FDI.[74] It codified GATT competence in the area of investment, building on the precedent of the 1983 Canada-U.S. dispute over FIRA. The Final Act identifies TRIMS as a violation of GATT Article III (national treatment) and requires all member states to notify the GATT of non-conforming measures and eliminate them within two years (five for developing countries).[75] Such measures include all requirements for local sourcing of inputs or domestic content in return for access. In addition, so-called "trade balancing" regulations which force foreign investors to balance imports with exported product and similar restrictions on foreign exchange are also banned. A total of five measures are identified as prohibited in the list. The rules only cover trade in goods and do not prohibit requirements to export in return for access. However, the list of prohibited measures is not exhaustive and may be added to at the end of a five-year review by a committee on TRIMs composed of member countries. Perhaps even more far-reaching are provisions of the Final Act which put investment under a strengthened dispute settlement process and permit cross-retaliation against members who violate the provisions of the agreement.[76]

VII. CONCLUSION

The investment provisions of the GATT fall a good deal short of the very ambitious U.S. proposals made at the beginning of the negotiations, although they have been hailed by American officials as a significant achievement of their objective to impose discipline on host states and limit the trade distortions. U.S. officials argue that these have cost the United States losses in exports and increased the costs of US investors doing business abroad.[77]

Canadian negotiators have expressed satisfaction with the outcome of the negotiations, pointing out that the rules, in comparison to the NAFTA, are very limited in the number of measures they prohibit and thus will not have any impact on existing Canadian investment policy.[78] Canada did not fully support the more ambitious U.S. effort to create a very comprehensive and broad list of prohibited measures.

Was Canada able to achieve its goals on investment issues at the GATT when they were in opposition to those of the United States? Was the multilateral forum important in contributing to the outcome? At least initially, the answer to both questions would be a qualified "yes." The TRIMs case suggests that under some circumstances multilateral fora may play somewhat of a counterweight role. But the extent to which they play that role will be a function of the organization's membership and its pattern of influence and the structure of Canada`s policy preferences. In the case of the GATT it tended to be dominated by the larger economies, and the dynamics of their trade disputes, particularly those involving the U.S. and EC.[79] But in contrast to earlier trade negotiations at the GATT, the Uruguay Round was characterized by both a large number of very diverse participants and a complex and lengthy negotiating agenda.[80] In this case one might suggest that the size and complexity of the negotiations limited U.S. influence. Moreover, the pressure to resolve some issues earlier in the negotiations allowed Canada to avoid issue linkage and the need to trade off other issues against investment, in contrast to the bilateral trade negotiations of 1987 where investment access was ultimately traded off against U.S. movement on trade dispute mechanisms and the United States was able to achieve a number of its investment goals vis-a-vis Canada.[81]

Bilateral or Multilateral Negotiations?

The contrast between the Free Trade negotiations of 1987 and

the GATT is instructive. Clearly Canada was forced to make much greater concessions on investment issues in the bilateral context. This came as a result of the direct linkage between trade and investment issues which the United States insisted upon. Although Canada had been reluctant to address the issue at the outset, the U.S. demands were clear from the start, as was the fact that Canada sooner or later would have to move on investment issues.[82] It came in the final days of negotiations in October, 1987, designed to rescue the foundering negotiations. Canada had clearly foreseen the necessity of moving on investment in order to secure U.S. concession on dispute settlement, a high priority given Canada's desire to enhance the security of access to the U.S. market. Concessions came in the form of a higher threshold for American takeovers of Canadian firms that would be reviewable under the Investment Canada Act. But Canada bargained furiously on the phasing of the change and the numbers involved.[83] Additional restrictions were imposed on Canada's ability to extract performance requirements from firms in return for approving acquisitions. Yet Canada did retain the right to screen large takeovers and to maintain broader restrictions on uranium, oil and gas, and cultural industries. Overall, though, concessions had to be made on investment as part of a trade-off to secure gains on the dispute settlement side.

The trilateral NAFTA negotiations stand in contrast to the FTA in the rather limited concessions Canada ended up making on investment issues, despite the U.S. desire to address unfinished business and eliminate investment screening and the special restrictions in other sectors such as culture.[84] In the NAFTA case Mexico, with its more restrictive policies, was clearly the higher priority target for U.S. negotiators. Canada, like the United States, also sought increased access to Mexico and enhanced security for Canadian investors there. But the existence of the FTA agreement also provided a logical model and a floor for Mexican investment concessions. In the NAFTA the changes for Mexico paralleled the Canadian threshold for investment review. But the NAFTA also provides a more inclusive definition for North American investors and addresses issues of investment dispute settlement. Perhaps because of the U.S. desire to secure an agreement prior to the fall election in 1992, Canada was able to resist pressure to make further investment concessions, although it unilaterally gave up the restrictions on oil and gas screening part way through the negotiations, largely for

domestic reasons.[85] But in both the FTA and NAFTA changes to Canada's investment regime went far beyond those negotiated at the GATT.

In contrast, at the GATT the structure of priorities for both Canada and the United States was somewhat different from the FTA or NAFTA negotiations. Clearly the United States was dealing with an array of actors that included the European Union which provided strong opposition to the United States on its key goals in agriculture. In addition the wide array of third world countries determined to challenge the United States priorities on investment issues meant that attaining U.S. objectives on investment would have required a lot of time and effort. For many countries, including the U.S. and Canada, higher priority issues at the Uruguay Round such as agriculture and services and the severe disagreements they entailed overshadowed the TRIMs negotiations. The large number of negotiators were willing, again because of the structure of their own priorities, to live with a limited agreement on TRIMs in order to finalize a package containing issues of higher priority. The net result was an early compromise that created rules on TRIMs but limited their coverage, while leaving the door open to extend coverage in the future. Canada thus avoided any trade-offs of investment against other important issues.

Unlike the OECD case in the 1970s where the single issue of investment and the dominance of capital exporters put Canada on the defensive, or the UN where developing countries had a majority but no real power and paralysis resulted, the GATT negotiations resulted in an agreement that reflected more of a balance of views. The complexity of the agenda, the diversity of participants and the political willingness to agree played a role. Further evidence of this is also provided in the services case where the United States was unable to eradicate cultural restrictions, an area of ongoing bilateral disagreement, as a result of France's strong opposition to U.S. pressure to remove limits on foreign programming.

But it is also clear that Canadian concerns on investment issues have altered substantially since 1983. Canada has largely abandoned the use of performance requirements as a result of the GATT decision of 1983, the FTA and the NAFTA, and a perception on the part of state officials that globalization and changes to the nature of international firms have limited the ability of the state to bargain over investor access in return for enhanced performance. Nonetheless, in those

areas where disagreements remain, multilateral fora may provide a context where Canada can advance its interests vis-a-vis the U.S., but the extent to which that will be the case is dependent on membership, influence patterns, the nature of the agenda and the dynamics of the negotiations themselves.

Negotiations on investment issues will continue within international organizations as both states and powerful lobby groups of international capital see it in their interests to create a set of rules internationally. Despite the fact that many states' rules on foreign direct investment have evolved significantly in the direction of liberalization, differences continue to exist even between Canada and the United States. Liberalization in Canada has been incomplete and remains politically sensitive, especially in the area of cultural industries. Recently, Industry Canada's Investment Review Division (the organizational successor to Investment Canada) denied the application of Borders, a giant U.S.-based book retailer, to expand into Canada.[86] Denials of applications had been a rare occurrence for the past decade. This may signal a stronger enforcement of investment restrictions in this area and could see new bilateral conflict over investment issues. At the same time Canada, along with other members of the OECD, agreed to a new round of negotiations launched in May, 1995,[87] to create a new multilateral agreement on investment which, unlike the first code discussed above, would be legally binding and enforceable.

Will Canada's experience be similar to that of 1975, where U.S. pressure was very successful at the OECD and Canada found itself isolated? Unlike the Uruguay Round, the OECD negotiations will involve somewhat more like-minded countries on investment issues. It is also clear that Canada's investment preferences have altered substantially since 1975. But differences do remain between Canada and the United States on investment issues and the different negotiating context at the OECD should provide a contrast to that of the Uruguay Round. The talks will undoubtedly shed further light on the debate over Canada's role in multilateral economic organizations and whether these organizations can provide a counterweight to U.S. dominance in the bilateral economic relationship.

ACRONYMS

CDIA	Canadian direct investment abroad
EC	European Community
FTA	Free Trade Agreement
FDI	foreign direct investment
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
MNEs	multinational enterprises
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
TRIMs	trade-related investment measures
UN	United Nations
WTO	World Trade Organization

NOTES

Financial support for this research from the Academic Research Council of Concordia University College is gratefully acknowledged.

[1] See Robert Reich, "Who is US" *Harvard Business Review* 90 (January-February, 1990), 53-64. Richard J. Barnet and John Cavanagh *Global Dreams: Imperial Corporations in the New World Order* (New York: Simon and Schuster, 1994) make the argument that states have lost power to multinationals corporations which have themselves lost a national identity. John Ruggie has argued that the phenomenon of globalization may necessitate a new vocabulary for describing the international system. Other scholars such as Stephen Krasner, Simon Reich and Ethan Kapstein are much more sceptical of the argument, first that multinationals have lost their national identity and second, that states are powerless in their ability to regulate international capital. For a discussion of these views see Ethan Kapstein, "We are US: the Myth of the Multinational," *National Interest* (Winter, 1991): 55-62 and *Governing the Global Economy* (Cambridge, Mass: Harvard University Press, 1994), chapter 1.

[2] Robert Keohane, *After Hegemony* (Princeton: Princeton University Press, 1984).

[3] See for example the articles in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1995).

[4] Tom Keating calls multilateralism one of the "most prominent and persistent themes in the practice of Canadian foreign policy"; see *Canada and World Order: The Multilateral Tradition in Canadian Foreign Policy* (Toronto: McClelland and Stewart, 1993), 10.

[5] This argument was made frequently in the debate over the Free Trade Agreement. See for example Duncan Cameron, "Introduction,"*The Free Trade Papers* (Toronto: Lorimer, 1986),xviii. See also Michael Hart, *Decision at Midnight: Inside the Canada-U.S. Free Trade Negotiations* (Vancouver: University of British Columbia Press, 1994), chapters 1 and 2..

[6] This approach is often labelled the "new institutionalism" and is critiqued in Alexander Wendt and Raymond Duvall, "Institutions and International Order," in Ernst-Otto Czempiel and James Rosenau, *Global Changes and Theoretical Challenges* (Toronto: Lexington Books, 1989), 51- 74.

[7] James Caporaso and Stephen Haggard, "Power in the International Political Economy" in Richard J. Stoll and Michael D. Ward (eds.) *Power in World Politics,* (Boulder, Colo: Lynne Reinner, 1989), 109.

[8] See G. John Ikenberry and Charles A. Kupchan, "The Legitimation of Hegemonic Power," in David Rapkin (ed.) *World Leadership and Hegemony* (Boulder, Colo: Lynne Rienner, 1990), 60- 61.

[9] For a discussion of how the United States has viewed organizations see Margaret P. Karns and Karen A. Mingst, "The United States and Multilateral Institutions: A Framework for Analysis in Margaret P. Karns and Karen A. Mingst (eds.) *The United States and Multilateral Institutions: Patterns of Changing Instrumentality and Influence* (New York: Routledge, 1992), 1-24.

[10] As Bruce Doern and Brian Tomlin point out multilateralism has often been exaggerated and underestimates the extent to which international organizations have served as a forum for bilateral negotiation. See G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), 63.

[11] Tom Keating, *op cit.*, describes Canada's desire to preserve the habit of consultation even at the expense of principle in his concluding chapter, 246.

[12] Ernie Keenes, "The Myth of Multilateralism: Exception, Exemption and Bilateralism in International Relations," *International Journal* (Autumn, 1995), 755-778, and Mark Neufeld. "Hegemony and Foreign Policy Analysis: The Case of Canada as Middle Power," *Studies in Political Economy* 48 (Autumn, 1995), 7-29..

[13] For a discussion of this regime see Robert K. Patterson, "Canada and International Legal Regimes for Foreign Investment and Trade in Services" in Claire Cutler and Mark Zacher (eds.) *Canadian Foreign Policy and International Economic Regimes* (Vancouver: University of British Columbia Press, 1992), 130-152.

[14] Robert Keohane, "Multilateralism: An Agenda for Research," *International Journal* XLV: 4 (Autumn, 1990), 739.

[15] Government of Canada, *Foreign Direct Investment in Canada.* (Ottawa: Information Canada, 1972).

[16] *Ibid.*, 392.

[17] The following account of Canada's activities at the OECD and the United Nations is based on documents from the 1968-85 period obtained under the Canada Access to Information Act. These included written memoranda on international investment issues from the Department of Finance which included the minutes of meetings of the Interdepartmental Committee on International Investment Policy. Briefing books for meetings of the OECD Committee on Multinational Enterprises and the Committee on Capital Movements and Invisibles Transactions were obtained from the Department of External Affairs, along with telexes to and from the Canadian mission to the OECD in Paris and the UN in New York. These were supplemented with interviews with a number of officials in those departments, including the officer who chaired the interdepartmental committee in the 1974-77 period.

[18] See Elizabeth Smythe, *Free to Choose : Globalization, Dependence and Canada's Changing Foreign Investment Regime: 1957-87* Ph.D Dissertation, Carleton University, 1994, especially chapter 6.

[19] When founded in 1961 it had 20 members. In 1985 total membership was 23 listed as follows: Australia, Austria, Belgium Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

[20] Taken from Article 1 of the founding charter of the organization as reproduced in OECD, *The Organization for Economic Cooperation and Development* (Paris. OECD, 1963).

[21] See John Robinson, *Multinationals and Political Control* (New York: St. Martin's Press, 1983), Part III which deals with the OECD code. Interviews with officials indicated that decisions were often by consensus but that the United States usually set the agenda, while the Secretariat played a major role in developing the work program.

[22] See Robert Wolfe, "The Making of the Peace, 1993: The OECD in Canadian Economic Diplomacy," paper presented at the Annual Meeting of the Canadian Political Science Association, Ottawa, June 4-6, 1993.

[23] See A.F.W Plumptre, *Three Decades of Decision: Canada and the World Monetary System, 1944-75* (Toronto: McClelland and Stewart, 1977), 132.

[24] There are several terms used by international organizations when referring to multinational corporations. In the UN the term "transnational corporations" is used while in the OECD the term "multinational enterprise" is favored. Since these terms are essentially interchangeable we will, in discussing the negotiations within these organizations, do so in the terms they use.

[25] United Nations, *Multinational Corporations and World Development*, (UN: New York, 1973). For some useful summaries of the sequence of developments in the UN and the OECD see Christopher J. Maule and Andrew Vanderwal, "International Regulation of Foreign Investment," *International* Perspectives. (Nov/Dec., 1985); John M. Kline, *International Codes and Multinational Business* (Westport, Conn: Quorum Books, 1985), John Robinson, *Multinationals and Political Control.* (New York: St. Martin's Press, 1983) and Werner Feld, *Multinational Corporations and UN Politics: The Quest for Codes of Conduct.* (New York: Pergamon Press, 1980).

[26] John Robinson, *op cit*, Part III, Chapter 8, "The Guidelines Paternity,", 113-118.

[27] Statement of the Hon. William J. Casey at the 4th Special Session of the OECD Executive Committee on 5th July, 1973.

[28] *Ibid.*

[29] Department of External Affairs, letter summarizing minutes of the October 16, 1974, meeting of the Interdepartmental Committee on International Investment Policy, Oct, 24, 1974.

[30] Confirmed in interview with official in External Affairs who chaired the interdepartmental committee in 1975-76, October, 1985.

[31] Statement by the Secretary of State for External Affairs, the Hon. Allan J. MacEachen at the OECD Ministerial Meeting in Paris June 21, 1976.

[32] See Theodore Moran, *The Impact of Trade- Related Investment Measures on Trade and Development* (New York: UN, 1991), who discusses these studies.

[33] Office of the President, *International Investment Policy Statement* September,9, 1983 and 1984 Trade and Tariff Act.

[34] Geza Feteketuky, *International Trade in Services.* (Washington: Ballinger for the American Enterprise Institute, 1988), especially the appendix "The History of a Campaign: How Services Became a Trade Issue." Mr. Feteketuky was a senior official with USTR and was extensively involved in trade negotiations at the OECD and the GATT.

[35] The Consultative Group includes the United States, Japan, the European Community, Canada, Australia and a number of developing countries such as Argentina, India, Brazil, Nigeria and the Philippines.

[36] See the comments of Marc Leland, Assistant Undersecretary for International Affairs in the Treasury, to the United States Senate Finance Committee, May 2, 1982.

[37] See United States Trade Representative William Brock's statement to the Subcommittee on International Trade of the Senate Finance Committee, March 1, 1982, on "The US Approach to the 1982 Meeting of Trade Ministers of the GATT."

[38] *Ibid.*

[9] Hon Ed Lumley, Minister of State for International Trade, "The Trade Challenge," Speech to the Toronto Chamber of Commerce, June 22, 1982, 5.

[40] See Gilbert Winham, "GATT and the New Trade World," *International Perspectives*, 1983, 3-6, on Canada's concerns regarding investment.

[41] Hon. Ed Lumley, Minister of State for International Trade, "The Trade Challenge" Speech to the Toronto Chamber of Commerce, June 22, 1982.

[42] See the comments of Rodney de C. Grey, "The Service Industries, a Note of Caution About the Proposal to Negotiate General Rules About Traded Services," in John Whalley (ed.) *Canada and the Multilateral Trading System* (Toronto: University of Toronto Press, 1985).

[43] See Winham, *op cit.*, 1983 on Canada and developing country opposition.

[44] Testimony of United States Trade Representative William Brock to the Senate Committee of Finance, January 25, 1983, on the "Administration's Assessment of the 1982 GATT Ministerial Meeting."

[45] *Ibid.*

[46] See Brock's statement to International Subcommittee, *op cit*, 1982.

[47] Because of the opposition the U.S. encountered it was unsuccessful in the November, 1982, GATT ministerial in getting the TRIMS issue included in the final declaration. See Gilbert Winham, "GATT and the New Trade World," *International Perspectives*, 1983, 3-6.

[48] The subsequent discussion of the case is based on the General Agreement on Tariffs and Trade, *Canadian Administration of the FIRA: Report of the Panel* (Geneva: June 25, 1983), which provides a summary of the arguments of each side, along with third party interventions, such as that of Argentina.

[49] *Ibid.*

[50] See "Canada to reword FIR Act before the final GATT decision," *Globe and Mail*, January 20, 1984, B1.

[51] Industry Canada, *Formal and Informal Barriers in the G-7 Countries* (Occasional Papers, Number 1, Volume 1, Ottawa, 1994.

[52] Statistics Canada, *Canada's International Investment Position* (Ottawa, 1984 and 1994).

[53] Elizabeth Smythe, "Capital Mobility and the Internationalization of Canadian Investment Policy," in G. Bruce Doern, Leslie Pal and Brian W. Tomlin (eds) *Border Crossings: The Internationalization of Canadian Public Policy* (Toronto: Oxford University Press, 1996).

[54] Statistics Canada, *Exports by Country* (Ottawa, 1985).

[55] See Doern and Tomlin, *Faith and Fear, op cit.*, chapter 3 for a discussion of this policy shift.

[56] General Agreement on Tariffs and Trade, *Ministerial Declaration on the Uruguay Round* (Geneva, 1986).

[57] *Ibid.*

[58] Article 1610 of the *Canada-US Free Trade Agreement* (Ottawa: Department of External Affairs, 1987).

[59] For a discussion of TRIMS and the GATT see United Nations, Centre on Transnational Corporations, *New Issues in the Uruguay Round of Multilateral Trade Negotiations* (New York: UN, 1990) and Theodore Moran, *The Impact of Trade- Related Investment Measures on Trade and Development* (New York: UN, 1991), especially the appendix which deals with the GATT negotiations. See also Phedon Nicolaides, "The Changing GATT System and the Uruguay Round Negotiations," in Richard Stubbs and Geoffrey Underhill (eds.) *Political Economy and the Changing Global Order* (Toronto: McClelland and Stewart, 1994),217-229; and Stephen D. McDowell, "India, the LDCs and GATT Negotiations on Trade and Investment in Services,",in Stubbs and Underhill, *op cit*, 497-510.

[60] For a discussion of various country positions see McDowell, *op cit*, and the Appendix of Moran, *op cit.*

[61] See Moran, *op cit*, and the GATT, *News From the Uruguay Round* (1988-1993) which covered the monthly meetings of the TRIMs negotiating group.

[62] The discussion of Canada's role is based on documents obtained from Investment Canada / Industry under the Access to Information Act and interviews with officials from the Department of Foreign Affairs and Investment Canada in August 1994 and May, 1995.Other

country positions are taken from Moran and a review of reports in *News From the Uruguay Round.*

[63] See Edward M. Graham and Paul R. Krugman, "Trade-Related Investment Measures," in Jeffrey Schott (ed.) *Completing the Uruguay Round: A Results-Oriented Approach to the GATT Trade Negotiations* (Washington: Institute for International Economics, 1991) and Patrick Low, *Trading Free: The GATT and US Trade Policy* (New York: Twentieth Century Fund, 1993) chapters 8-10.

[64] Briefing note, External Affairs, May 2, 1990, 3.

[65] Investment Canada, Briefing Note, "Trade Related Investment Measures," December 2, 1993.

[66] See Moran, *op cit.* Appendix which describes the U.S. proposal as well as various issues of GATT *News From the Uruguay Round* (1988-89)

[67] These proposals are discussed in GATT, *News From the Uruguay Round*, various issues from the fall of 1989, as well as in Moran, *op cit.*

[68] See GATT, *News From the Uruguay Round*, December, 1989, for its report on the November 27-28 meeting of the TRIMs negotiating group.

[69] See reports of meetings in March and April of the TRIMs negotiating group as reported in *News From the Uruguay Round*, as well as Moran, *op cit.* For a general discussion of the concerns of developing countries see also Rodney de C. Grey, "1992", TRIMs and the Uruguay Round in United Nations, *The Uruguay Round: Further Papers on Selected Issues* (UN: New York, 1990).

[70] Letter to Don Campbell, Deputy Minister of International Trade, Department of External Affairs, from Paul Labbe, President of Investment Canada, May 15, 1990.

[71] See copy of "Canada's Informal TRIMs Text", December 10, 1990, obtained under the Access to Information Act.

[72] Interview with officials in August, 1994, and May, 1995.

[73] See Graham and Krugman; and Low *op cit.*

[74] See the General Agreement on Tariffs and Trade, *Final Act: Agreement on Trade-Related Investment Measures* (GATT: Geneva, December 15, 1993) Doc. MTN/FA-II-A1-A7. The GATT has been reformed, restructured and renamed the World Trade Organization.

[75] *Final Act*, 1993, *op cit.*

[76] See Thomas L. Brewer, "Foreign Direct Investment Dispute Settlement Procedures: The Changing Institutional Framework," Paper presented at the Annual Meeting of the International Studies Association, Washington, D.C. March, 1994.

[77] See the comments of Christopher Lion, Office of Multilateral Affairs, U.S. Department of Commerce, "Trade-Related Investment Measures" *Business America* (January, 1994), 8-10.

[78] The following summary of Canada's position and views is based a telephone interview with an official in the Department of External Affairs in July, 1994.

[79] For a discussion of this aspect of the GATT see Gilbert Winham, *International Trade and the Tokyo Round of Trade Negotiations*. (Princeton: Princeton University Press, 1989).

[80] See Phedon Nicolaides, "The Changing GATT System and the Uruguay Round of Negotiations," in Stubbs and Underhill,1994, *op cit*. 235.

[81] See G. Bruce Doern and Brian W. Tomlin, *Faith and Fear*: *The Free Trade Story* (Toronto: Stoddart, 1991) and Michael Hart, *Decision at Midnight* (Vancouver: UBC Press, 1994).

[82] For a discussion of the sweeping initial U.S. demands see Michael Hart, *op cit*, 236.

[83] See Doern and Tomlin, *op cit*, chapter 12.

[84] United States Congress, *United -States Canada Free Trade Implementation Act* (1988) outlined the unfinished business U.S. negotiators would be obligated to address in any further negotiations and included eliminating any investment screening and restrictions on cultural industries.

[85] See Doern and Tomlin, "Free Trade Revisited," Toronto *Globe and Mail* Report on Business, January, 1993, for this interpretation of the NAFTA negotiations.

[86] "U.S. Book Giant Thwarted," *Globe and Mail* (February 9, 1996), B1.

[87] Government of Canada, News Release, "Ministers to Attend OECD Meeting," May 18, 1995, and OECD, "A Multilateral Agreement on Investment," Report by the Committee on International Investment and Multinational Enterprises and the Committee on Capital Movements and Invisible Transactions. (OECD, Paris: May, 1995).

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ISSN 1-1047-1073