

PANEL DISCUSSION: PROGNOSTICATIONS

L.F.E. Goldie*
James M. Spence
Lorne S. Clark
Harold Russell
Michael Gadbaw
Frank Ruddy
John J. Barceló III
William Connell

PROF. GOLDIE: I would like to ask each of our panelists to prognosticate on the future of U.S.-Canadian relations in light of our discussions here today. Mr. Spence, would you please begin?

MR. SPENCE: I was asked at a conference by a lawyer acquaintance of mine from Toronto: "When are they going to repeal the Act?" I said, "I don't know, do you?" And he said, "Well, I'm not going to tell you," and he has never told me. My impression is, as I mentioned earlier, that the Foreign Investment Review Agency is here to stay. We receive various criticisms in the local press, one of which is that greater disclosure of the reasons for the decisions made should be given. Mr. Jamieson, the Minister of Industry, Trade and Commerce, indicated recently that he is quite open to any suggestions that come forward as to ways in which greater disclosure can be made. As yet, however, he remains unconvinced that there are effective and satisfactory ways in which that can be done. One of the difficulties is that investors frequently come forward and make full disclosure to the Agency about their plans for carrying on business in Canada, and those plans involve information that is very important to their affairs and which they would not like to see come into the hands of their competitors. There is a very strong feeling that the competitive position of investors should not be biased or prejudiced by reason of disclosure of the statements that they've made to the government. There are confidentiality provisions in the Act¹ which I believe are motivated by that same consideration. It may be that ways will be found to provide further disclosure, perhaps on some cumulative or aggregate basis, without identifying the applicants. Some steps in that direction have already been taken in the last Annual Report of the Agency,² which broke down various

* For biographical information, see the preceding panel discussions.

1. Foreign Investment Review Act, Can. Stat. c. 46, § 14 (1973).

2. [1974-75] FOREIGN INVESTMENT REV. AGENCY ANN. REP. 23-39, tables 1-17 (1975).

categories of commitments and undertakings, and it may be that that approach will be refined. That's one area which has received a great deal of comment in the national press, and there may be some developments in that area in the future.

PROF. GOLDIE: Thank you very much, Mr. Spence. Mr. Clark, may I ask you to prognosticate?

MR. CLARK: Sometimes our internal problems in various fields are much more difficult than Canadian-U.S. difficulties, and the best plans can obviously go astray.

I would just like to add that one of the aspects of Canada-U.S. relations which perhaps never receives enough attention, and which people like myself who work in the Embassy in Washington are extremely aware of, is the quality of the people with whom we work on the American side. There are people in the State Department, Department of the Treasury, the White House, and many people on the Hill as well, who do their jobs in an effective manner while pursuing U.S. interests. However, even where we differ on very significant issues such as we have on the Auto Pact on occasion, there is a degree of mutual respect and mutual understanding, and the quality of the people involved makes for a situation where we can work together toward resolution of many difficulties. The kind of relationship that we are able to forge with these people is in many respects unique in comparison with that between any other two countries around the world.

Another point is that both the United States and Canadian governments, again perhaps more than any other two countries, are committed to a kind of process where we have such things as advisory committees from which we seek advice, comments, and observations from eminent academics and from institutions of higher learning. These sources have a different perspective than we in government, but are able to bring to bear a kind of expertise and sometimes a certain overview that those of us who are working every day in these areas sometimes miss. It's a question of missing the forest for the trees. Our reliance on and our respective relationships with our academic communities are a source of strength to our policy formulation and to our ability to look ahead with a degree of confidence that we won't be overlooking vital issues. This kind of contribution is essential and, as I said, almost unique in comparison with other countries.

PROF. GOLDIE: Thank you. Next, Mr. Russell.

MR. RUSSELL: One of the unsatisfying things about symposia about relations between the United States and Canada is that they

tend not to be terribly inflammatory or exciting. I think this is an important element in our relations. I've run into Americans from time to time who are really quite upset about things that are going on in Canada, almost to the point of anger. However, it is my judgment that it is the Department of State's view that there are really no major outstanding bilateral disputes with Canada—none that cannot be handled through the traditional mechanisms of cooperation which have existed for so long, such as the International Joint Commission. Bilateral irritants crop up from time to time, which are natural between any two partners in the same family, and the best thing to do always is to sit down and talk out the differences.

If I were to prognosticate about the future of our relationship in a changing world, I would guess that we will continue to have difficulties, that Canada will continue to, as it should in my judgment, grope its way toward a new identity, a new relationship with its big neighbor to the south, and toward the rest of the world. This will cause continuing problems, but I think that if we continue to rely on our traditional relationship of cooperation, and perhaps find new methods for cooperating, the future holds nothing but good for our relationship.

PROF. GOLDIE: Thank you very much. Mr. Gadbaw, would you please tell us your views of the future?

MR. GADBAW: I would certainly agree that, in our trade relations with Canada, we've reached the stage of maturity. I think there is a general recognition that it is not a zero-sum game we are playing; it is a game in which both sides can win. Generally, we can work out our differences at both the bilateral level and the multilateral level. I think we can continue to look forward to a situation in which we look to Canada as an ally, as a country which in many respects shares the views and outlook on multilateral trade of the United States. For that reason, I think there is a partnership that will continue and hopefully serve the interests of both countries.

PROF. GOLDIE: Thank you very much. Mr. Ruddy, would you please now take a look in the crystal ball?

MR. RUDDY: The discussion today has centered on two things: relationships between ourselves and Canada, and the international situation in general. There was quite a bit of discussion about the United Nations and what it has done through its various organs. In terms of the international situation, I'm afraid I don't really see much light at the end of the tunnel. I see the immediate future as being a very difficult time for investment, and I see some very dangerous trends. There are many very short-sighted social policies

being implemented which are inconsistent with property rights, with individual rights, and which have led, on an economic level, to the kind of deprivations that we are all aware of on the level of human rights. I think that the situation which Solzhenitsyn describes in the political area has a counterpart in the economic area.

The one ray of sunshine that I do see, from the discussion today and from the activities at the United Nations, is that we see in the positions of Canada and in the positions taken by the gentlemen representing the Canadian view today a basic respect for the integrity of property and the rule of law. I take great solace from that. There are all kinds of particular differences, and there are going to be disputes over this particular point or that particular point, and there are going to be the internal kinds of problems which Mr. Clark discussed in his very candid response to one of my questions this afternoon. All of those things are signs of strength, of life, and they are very good signs. So in terms of our own relationships with Canada, of course we are going to have differences and those have been spelled out today. But in general, I would be very sanguine about the future of U.S.-Canada relationships.

PROF. GOLDIE: Professor Barceló, may I call on you next please?

PROF. BARCELÓ: Let me make a couple of comments about the trade area, to which I addressed my remarks earlier. We've had discussions this morning about bilateral trade agreements, in particular the Canadian-American Automotive Products Agreement,³ which I think is a *sui generis* agreement. Some have suggested that we should have similar bilateral agreements in other sectors of trade, and move toward a kind of free trade area between Canada and the United States. I don't think that is likely to happen. It seems to me much more likely that progress towards liberalizing and expanding trade is going to be on a multilateral basis.

I draw that conclusion first from what appears to me to be the increasing caution with which the United States views the Common Market, which is a kind of free trade area. Developments there have not always been to the advantage of the United States, since the creation of a free trade area in Europe has meant, in some instances, diversion of trade to less efficient producers within the Common Market at the expense of the American interests. This has been

3. Agreement with Canada Concerning Automotive Products, *done* Jan. 16, 1965, [1966] 1 U.S.T. 1372, T.I.A.S. No. 6093 (effective Sept. 16, 1966).

particularly true in the agricultural field, where the United States has frequently been opposed to the Common Agricultural Policy of the Common Market. The United States has taken the position that these developments ought to be on a multilateral, not a bilateral basis. We ought not divide the world up into a number of different free trade regions at the expense of the benefits that can be gained from multilateral free trade.

With regard to multilateral developments, there clearly will be, I believe, an agreement reached at the current Tokyo Round in the GATT, and I expect it will be an agreement which will lower tariff barriers which, as we've been told by Mr. Gadbow, are at roughly the seven percent level. I don't want to predict what the new level will be. It seems that the harder area in these trade negotiations is going to be the nontariff area, where the nations are going to continue the work begun in the Kennedy Round. The Antidumping Code⁴ is a nontariff area agreement, and they are clearly devoting attention to subsidies and countervailing duties. These are areas in which national policies aimed primarily at social objectives are at stake. Where these policies begin to conflict, it will be much harder to reach agreements than in the trade area, where all that is necessary is to agree to a quantified percentage of reduction in tariffs, and where it's very easy to determine what is an exact trade-off. The agreements that are coming are going to be much more difficult, but they are in areas where this is unavoidable, because the western world is shrinking, and we are becoming more and more interdependent.

PROF. GOLDIE: Thank you, John. Mr. Connell, would you care to prognosticate?

MR. CONNELL: I do have two points that I wish to mention. As far as U.S.-Canadian relations are concerned, I think we are on a very strong, solid footing, and I expect that to continue. However, I don't know if you've read Sinclair Lewis' novel *It Can't Happen Here*, but "it" can happen here. What is "it"? "It" is nationalism and jingoism, an effort to keep out the "furriners" who wish to invest here. I think it's unfortunate, and I predict it will not triumph, but I can mention a couple of examples of restrictions here in the United States which have already been imposed, particularly on Arab oil money.

4. Agreement on Implementatin of Article VI of the International General Agreement on Tariffs and Trade, done June 30, 1967, [1968] 4 U.S.T. 4348, T.I.A.S. No. 6431 (effective July 1, 1968).

About two years ago all major corporations and banks in the United States were asked by both the Commerce Department and the Treasury Department to complete a very substantial report on foreign direct investment abroad and the portfolio holdings of foreigners here in the United States. Significant amounts of money were spent in filling out these reports. A bill has been introduced by Senator Inouye, and I understand that it has a good chance of passage, though I'm going to prognosticate that it will not pass, which would make this kind of report an annual obligation of American corporations.⁵ There's a very able young man at the Treasury Department whose name is Gerald Parsky, and I think you'll see his name frequently in the press. He always says, "Don't worry about it. Fill out the form, do what you have to do, we are not closing the door." As Harold Russell mentioned, there are a number of areas, such as radio, television, aviation, insurance, and atomic energy, where we have legitimately restricted foreign investment and foreign control, and Mr. Parsky assures us that these reports do not mark the beginnings of a program to restrict non-U.S. investors.

Senator Proxmire, however, has a bill, which I don't think will pass, which contains what I would consider nationalistic regulations which restrict foreign banks.⁶ This bill would also take away from the States the power to be more or less liberal, as they are now.

I also believe we're going to see many more disclosures of what we Americans have been doing abroad in Japan, in Italy, and in other places around the world. The subject of the international implications of "greasing the wheels," so to speak, would be an interesting symposium topic in itself. I think there will be many more congressional inquiries into this subject, and a presidential commission has been appointed to study this, perhaps indefinitely. In summary, I don't predict we'll restrict investors here, or prevent investors from coming here, but I do think our business operations abroad will come under much, much closer scrutiny in the years ahead, and indeed they should.

PROF. GOLDIE: Thank you very much. I would like to throw the discussion open to everybody. Does anyone have a question, contribution, or comment to make on the prognostications up here? Richard Young please.

5. S. 2839, 94th Cong., 1st Sess. (1975). The bill was enacted on October 11, 1976 as the International Investment Survey Act, Pub. L. No. 94-472, 90 Stat. 2059 (1976) to be codified in 22 U.S.C. §§ 3101 *et seq.*

6. S. 958, 94th Cong., 1st Sess. (1975). This bill was not enacted into law.

MR. YOUNG: I share many of Mr. Ruddy's concerns. One thought does occur to me. None of us, I think, has any great trouble with the basic premises about sovereignty over natural resources which Mr. Clark so ably reviewed in his paper. I think, however, that one of the great difficulties is that when a country embarks on a course of action and makes representations and enters into agreements, it creates expectations on which other parties rely, and there is an obligation of good faith toward those to whom such representations have been made. What I would like to emphasize is that this concept of good faith in one's dealings is, or at least should be, independent of one's economic or social views. All I am asking is that when one makes a pledge of any kind, then others are entitled to rely on it, and this is true domestically, and I would hope it would come to be again internationally. Otherwise, everything comes to a grinding halt. So I would hope that we would focus on this issue at this phase, and, as one who has had long and friendly associations with Canada and great affection and admiration for the country and its people, I know no two better countries to work out a demonstration of how to solve these problems in good faith and mutual respect.

PROF. GOLDIE: Thank you very much, Dick. I think that's a very good closing note. I would like to thank all the panelists who have come here to share their thoughts with us.