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Is It Time for an Atlantic Free Trade Area (AFTA)?

Summary

The roundtable webinar, “Is it Time for an Atlantic Free Trade Area”, organized by the Hyman Soloway Chair in Business and Trade Law at the Faculty of Law, University of Ottawa, the CN-Paul M. Tellier Chair on Business and Public Policy, University of Ottawa and the Centre for European Studies’ Jean Monnet Centre of Excellence, Carleton University was held in a virtual setting on May 27, 2021.

Armand de Mestral, Professor Emeritus and Jean Monnet Chair in the Law of International Economic Integration at McGill University provided a presentation on the benefits of an AFTA. The presentation was followed by a roundtable discussion composed of five speakers: Özlem Atikcan, Associate Professor in Politics and International Studies at the University of Warwick; Marc Bungenberg, Director of the Europa-Institut and Professor of Public Law, European Law and Public International Law at the University of Saarland; Michelle Egan, Professor and Jean Monnet Chair ad personam, School of International Service, American University; Ricardo Ramirez, Founder and Partner of RRH Consultores, S.C. and former WTO Appellate Body Member; Sylvie Tabet, General Counsel and Director, Trade Law Bureau, Global Affairs Canada.

Prof. Anthony Vanduzer, Hyman Soloway Chair in Business and Trade Law at University of Ottawa provided the welcoming remarks, Prof. Crina Viju-Miljusevic from the Institute of European, Russian and Eurasian Studies at Carleton University, moderated the discussion, while Prof. Patrick Leblond, CN-Paul M. Tellier Chair on Business and Public Policy at University of Ottawa provided a summary and concluding remarks.

This document summarizes the main conclusions and outcomes of the Roundtable Webinar: “Is it Time for an Atlantic Free Trade Area?”

Opening remarks:

Speaker: **Armand de Mestral**

Prof. de Mestral discussed the economic, political and moral benefits of an AFTA, in addition to the security component, providing an emphasis on the need for Western democracies to cooperate

in areas of shared interest and values, to effectively compete against states, such as China, who seek to impose their own standards on the world.

Prof. de Mestral conceptualized AFTA as an FTA comprised of Canada, US, Mexico, the EU, the UK, European Economic Area (EEA), Switzerland, and Balkan countries, but excluding Russia and the Caucasus, with the possibility of expanding to the Caribbean, farther down the road. He mentioned other large FTAs that currently exist, including CPTPP, RCEP, Andean Pact and the EU, and the increasing tendency towards larger FTAs.

The proposed agreement would be comprehensive in terms of removing market restrictions on goods, services and IP, it would have a binding and obligatory dispute settlement system stronger than NAFTA's and CUSMA's, specifically regarding the need of supersedure over WTO, and it would prioritize future issues, such as IP, which has now become the principal source of wealth, regulation of the internet and AI, and setting common standards for market access. It would provide participating countries with a new forum to discuss common interests, as well as a stronger capacity to address new issues as they arise. AFTA would also have a security component, and reinforce and safeguard democratic values. However, it would not be a common market with an independent regulatory authority.

Economic advantages for an AFTA range from creating a larger market, freer movement of goods, greater market access to services, the possibility of establishing common regulatory regimes, more leverage in negotiations, and strengthening of common competition rules. It would allow member states to reform the WTO, and influence issues of common interest, such as climate change, human rights, and labour standards. Negotiations in themselves also present an opportunity to resolve longstanding disputes, such as the Boeing-Airbus dispute.

Cooperation via an AFTA would allow Western democracies to more effectively compete against countries who seek to impose their own standards on the world. In particular, China's role in international organizations and the newly signed Regional Comprehensive Economic Partnership (RCEP) between Asia-Pacific nations, including China, are examples of how the country is trying to influence standards, including in IP, goods and services, and telecoms. Common values will provide countries within the AFTA the capacity to negotiate and stand in solidarity from a position of strength. The climate change agenda also serves to benefit from enhanced cooperation. A solid trading and economic foundation also projects democracy as an effective system.

While acknowledging the timely debate around free trade agreements (FTAs) and more specifically around production of drugs during the Covid-19 pandemic and need for domestic supply, Prof. de Mestral asserted such debates could be included in AFTA negotiations. He reiterated that FTAs work best with neighbours, and that North American and European economies are the most complimentary in existence. For these reasons an AFTA would reduce EU-US tensions, give the UK the opportunity to gain market access to all these countries via a single agreement, and allow countries such as Switzerland and Canada to strengthen their market access.

Prof. de Mestral referenced the support of EU leaders, Ursula von der Leyen, President of the European Commission, and Charles Michel, President of the European Council for an AFTA; a recommendation to start by stressing security and common values, taking the EU precedent; while

also acknowledging the unlikely willingness of US President Joe Biden to embrace a FTA before the 2022 Congressional elections. However, with regard to the latter point, this could change depending on the election results, especially considering certain political and trade pressures the administration is under, for example, vis-à-vis China.

To conclude, Prof. de Mestral proposed that Canada, by reason of its historic readiness to take on leadership roles, should start promoting a common trade agenda stressing contemporary issues after 2022: AI regulation, e-commerce, regulation of data transfers, labour, environmental protection and climate change.

Roundtable discussion

Speaker: **Özlem Atikcan**

Prof. Atikcan discussed the challenges and opportunities of an AFTA, whose success she linked to framing, and put forward several issues that will need to be addressed in moving forward with the concept.

Firstly, the election of Joe Biden has changed political dynamics, resulting in such an agreement becoming more feasible. Secondly, in the context of an ongoing recovery from the Covid-19 pandemic, strengthening economic and political ties between North America and Europe to gain power against other parts of the world, particularly China, is an opportunity to all parties concerned. Thirdly, AFTA negotiations can help defuse current problems in trade relationships, such as post-Brexit unease, and failed negotiations of Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US.

Prof. Atikcan argued that the potential for success rests largely on how the negotiations are framed, and in turn how the public perceives the concept. She noted how emphasizing certain key issues can shift public opinion and politicization patterns, which often occur when issues are complex and technical. As trade debates are technical and can have uncertain consequences for democracy, social and culture norms, they often elicit emotional responses. It is therefore important for relevant issues to be easily understandable to increase popular support. Further, existing differences in social values, social protection, food safety, cultural products and workers' rights can become magnified with framing and politicization.

Prof. Atikcan presented four key points that affect the success of an AFTA. The first concerns the scope of the agreement. Large agreements, such as TTIP, while highly comprehensive, amplify framing effects when they contain many subjects with complex distributional and social implications, notably issues around healthcare, food safety, consumer protection, labour market, regulatory standards, and government procurement, and for that reason a more limited deal may prove more popular. The second point was on the importance of timing, and how economic context can lead to opportunistic behaviour by political parties. For that reason, Prof. Atikcan suggested that waiting until the current economic downturn is resolved may help alleviate some of the otherwise expected risks. The third point centered on the relationship between AFTA and existing agreements. TTIP, Canada-EU Comprehensive Economic and Trade Agreement (CETA), and the Brexit deal were all controversial and the EU may not look favourably to disagreement if it is seen

as providing a safety net for any of its Member States to leave the EU. The EU would also need to clarify the value-added from disagreement and protect its own standards. For the UK, it would have to carefully frame the agreement as distinct and not returning to anything similar to the EU. The last point centered on diffusion of the AFTA concept, and stated that the agreement should be proactively pitched, taking into consideration hot button issues from existing trade agreements, CETA, TTIP, Brexit, would likely reappear.

To conclude, Prof. Atikkan stated the security and democracy dimensions would play an important role in successfully framing an AFTA and its subsequent negotiations, and that Canada should play a leading role in facilitating the negotiations.

Speaker: **Marc Bungenberg**

Prof. Bungenberg talked about the anticipated negative reaction of an AFTA from external actors, which stems from its expected impact on global competition.

Prof. Bungenberg noted that while the AFTA would be beneficial to the participating countries, it would horrify Russia and China, among others. He went on to discuss how from reading student research papers over the last couple of years, there has been a trend of students holding increasingly favourable views of totalitarian systems, such as in China, and simultaneously having anti-American sentiments. For these reasons, more than ever now, it is important to counter this narrative and promote the benefits of an AFTA.

Competition is no longer only between enterprises, but against ideas, and if China had not developed the way it did, the concept of an AFTA probably would not have developed. On the topic of third country subsidies, the European Commission has been reforming trade defence instruments in reaction to increasingly stronger Chinese influence. This is a matter that not only the EU should be concerned with, but also North American countries. In economic terms, it speaks to the benefits of having a regional plurilateral trade defence instrument.

Prof. Bungenberg argued the time to propose AFTA is right, considering the current easing of EU-US tensions: unlikelihood that there will be sanctions for North Stream 2, the Boeing-Airbus dispute, and how there has not been any countervailing duties, nor retaliation, progress on resolving steel tariffs, most recently in the form of a joint EU-US statement outlining how they can tackle these issues. CETA is a positive development for EU-Canada relations, however, it has not yet been ratified in all EU Member States, particularly in Germany, where claims of constitutionality are still being addressed, and where there will be elections in September, with the Green Party, who is not in favour of CETA, is polling favourably.

In conclusion, AFTA would not conflict with WTO, and its core economic value will come from a strengthening of the market based approach together with competition law, subsidies, taking on state-owned enterprises, and increasing transparency on different issues.

Speaker: **Michelle Egan**

Prof. Egan provided a summary of the three rationales for an AFTA: geostrategic, efficiency-based and values-based trade. The former speaks to the streamlining of existing agreements and promotion of standard setting trade facilitation, especially in areas of prudential regulations such as AI and new technology, the rise of China and to provide a balance towards the orientation to the Asia Pacific, referencing TTIP, RCEP, Association of Southeast Asian Nations (ASEAN) and Belt and Road Initiative (BRI). The second rationale is about cutting red tape, promoting a neo-liberal paradigm, and market access standards. The last rationale is focused on labour standards, gender equality and combatting climate change and diversity loss.

Prof. Egan posed several important questions on AFTA. Firstly, is it desirable and/or worth the effort? In the US, the Biden administration has inherited a protectionist trade policy, and given the composition of Congress, and the need to prioritize China, it is uncertain whether AFTA is desirable and/or worth the effort. Another question is whether a semblance of AFTA already exists, referencing foreign direct investment supply chain levels of commerce and the number of companies domiciled abroad. Thirdly, what is an optimal agreement? Next, what constitutes membership? Would such an agreement marginalize certain countries that also share democratic values, for instance, Australia and New Zealand? Lastly, could the diversity of members cause a lowest common denominator scenario?

Prof. Egan argued such an agreement would need to be comprehensive as a result of the sunk costs businesses have to pay. This was the case for Mercosur, CETA and TTIP. Due-to the required business buy-in there must be deliverables. This brings us back to the question of scope: is a limited or more ambitious agreement desired? Equally important to negotiation and often overlooked is implementation and compliance. Devolution and para-diplomacy is particularly important in Canada, where including sub-national actors is key to successful implementation. A lot of the internal markets of Canada, EU, Mexico, and US are fragmented with heterogeneity which further emphasizes the need to include these actors in negotiations.

The divergence of patterns of integration between the EU and North America have a profound impact on relations. Whereas the EU approaches the world economy in a coordinated manner with a common commercial policy, Canada, Mexico and the US pursue their trade policy with minimal consultation, and the smaller economies have been affected by and more dependent on the US economy. This reliance is what has prompted Canada and Mexico to seek trade diversification: CETA and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). There is also the problem of competing against different regulatory models.

The Council of Foreign Relations and Bush Institute have in essence called on policymakers to recognize their trilateral interests. Their recommendations range from internal market liberalization in various areas, to also discussing whether North American countries can leverage their combined negotiating power against third countries and the EU. In response to the report, Prof. Egan proposed a pre-AFTA coordinated North American strategy towards the EU that would be capable of putting the three countries on par with other regional trade blocks, such as ASEAN and Mercosur, which negotiate as individual states, but also collectively on trade.

Prof. Egan concluded that foreign direct investment is essential for critical infrastructure and technology transfer, which AFTA talks can take up, considering recent legislation in the US,

Canada, and EU, such as Committee of Foreign Investment in the United States (CFIUS) Investment Act and Scrutiny legislation. Secondly, there will need to be a discussion on how differences in rules and regulations can be rectified to prevent another situation involving various regulatory regimes existing at the same time. Regulatory cooperation councils already exist to address duplicative standards and regulatory equivalence. The idea here is not to have an independent regulatory authority, rather it is about private sector coordination, trade and market access standards.

Speaker: Ricardo Ramirez Hernández

Prof. Hernández provided his perspective on the three rationales for an AFTA. For the political considerations, it is not clear whether the right message is being sent on trade, or if it is the right time to initiate new negotiations, considering ongoing fisheries negotiations at the WTO, which will demonstrate the US' stance on the issue, the waiver on vaccines, and dispute settlement in the WTO. For the latter point, it has been almost five months without any country initiating a case at the WTO. With these considerations in mind, Prof. Hernández argued that starting negotiations on AFTA would be premature, particularly due-to the uncertainty of US positions and how they would react to proposals.

With respect to the moral rationale, Prof. Hernández largely dismissed this argument, citing how Latin American countries have been trying to integrate themselves based on a moral grounding for nearly a century now. On the economic rationale, there is an important question to be asked related to what template will be used for these negotiations. Many problems in discussions are linked to steel and aluminum, which leads to another question: what does an AFTA that prioritizes future issues look like? Will it resemble the Uruguay Round negotiations with one or more obligations? Issues have changed and will not be the same as those regulated in GATT in 1947.

Prof. Hernández voiced skepticism on the ability to regulate AI, data and the internet, owing in part to the uncertainty of US willingness to negotiate, together with the unlikelihood that the US positions on climate change and labour standards are in alignment with other countries. For instance, take labour rights in the US-Mexico-Canada Free Trade Agreement (USMCA), would the EU agree to facility inspections to verify compliance of labour rights? Prof. Hernández emphasized that trade in goods and services is different from in the past, and in order to achieve the desired outcomes of freer movement, the new reality must be recognized. This is why a new template must be used for as AFTA.

In the conclusion of his presentation, Prof. Hernández argued that leaving Latin America, the Caribbean and Africa out of talks does not send the correct political message, and at the very least AFTA negotiations should include Latin America and the Caribbean in the discussion, otherwise the geostrategic value of an AFTA will not be realized.

Speaker: Sylvie Tabet

Ms. Tabet started her presentation by acknowledging the importance of strengthening Atlantic ties, making reference to regulatory cooperation both within and outside of the WTO. There is a need to address longstanding EU-US trade tensions. However, she argued that the EU and US do not

have a real interest in a comprehensive trade area. Therefore, an FTA is likely not the right mechanism. Ms. Tabet referenced the challenges and failed TTIP agreement. There was huge opposition in particular on investor state dispute settlement and agricultural Sanitary and Phyto-Sanitary (SPS) standards between the EU and the US. Other fundamental issues are related to government procurement and additional sensitivities from Brexit. Ms. Tabet argued that these significant challenges would make the EU and US hesitant towards anything resembling a common regulatory regime.

At the same time, there is a need to improve conformity and look at common approaches in areas such as technology governance and AI. There are obstacles that should be addressed right now: the Boeing-Airbus dispute, steel tariffs, and climate change and the carbon tax. For the former, there may be a mutual desire to resolve the issue brought by the Chinese threat and cross-retaliation. There is hope that progress can be made on removing the steel tariffs slowly, if not immediately. On the latter point some of this tension has been reduced from the Biden administration re-joining the Paris Agreement. There may be a possibility for the EU and the US to look for a more common approach in this area now, and there have even been signals on the US side about not setting aside something resembling a border adjustment.

Ms. Tabet also voiced skepticism towards a FTA and using an old template to resolve existing disputes. With regard to market access, she asked what is the value-added? For example, Canada already has an agreement with the EU, UK has asked to join CPTPP; there may be some value for the US, but it also may divert the competitive advantage from Canada and Mexico.

Speaker: **Armand de Mestral**

Prof. de Mestral responded to the panel speakers by summarizing the key points in his presentation. He argued that in developing the concept of an AFTA, he asked himself whether it would be beneficial to countries in the long run, to which he was able to provide an answer in the affirmative. Despite the issues raised in the AFTA countries, and the anticipated responses of external actors, it is in their best interests to pursue this to address the pressures and to strengthen their economies. Prof. de Mestral reiterated the importance of reforming the WTO, where certain issues remain constant, including national and fair treatment. Rather than relying on associations and coalitions of the willing to take on issues, AFTA would provide a stronger and more structured forum. At the same time, such a forum would be able to address new and emerging issues in a more coordinated manner, namely countering Chinese influence to push its standards on the world.

Part 2: Questions and Answers

Q: What happens to/in the rest of the world in this vision of limited/exclusive multilateralism?

R: Prof. de Mestral stated that a united AFTA with a clear purpose would go a long way to improving the WTO, and that this serves to benefit the entire world. Responding to whether countries such as Turkey could be included, Prof. de Mestral replied that it is a political question, while the fundamental concern is that Western countries need to respond to the challenges at hand. The next step after establishing an AFTA would be to have it address these issues at the WTO and present its messages to the world.

Prof. Bugenberg responded by saying it comes down to a competition of systems, and if it is clear that Western countries are losing against China, then there is no longer a question over including South America or Africa. Nobody asked the EU, Canada or the US about the BRI. Secondly, having the AFTA proactively force change in the WTO after twenty years of it do nothing would be a positive development.

Prof. Hernández referenced how the positive effects and optics of NAFTA negotiations led to them subsequently being used as a template to conclude further agreements with Latin American countries. With this in mind, he argued that these older agreements can be used as a template. Prof. Hernández disagreed that an AFTA would bolster WTO to reach agreements, instead arguing what is really needed is for Canada, the EU and the US to resolve the current crisis. He also stated that an AFTA would send the wrong message and call into question the utility of the WTO.

Q: From a Canadian perspective, it is hard to be against the idea of AFTA. However, I do not understand why this should be a high priority for Canada, given that Canada has recently negotiated CETA and CUSMA (as well as CPTPP). Given that the idea of a US-EU TTIP is still out there, I would think that it is for the US, if anyone, to take the lead.

R: Prof. de Mestral stated that he did not think the US is able to take the lead for a variety of political reasons at the moment. There is about a year and a half before anything can really happen. In the interim, one country needs to lay the groundwork, which is something Canada has historically been skilled at doing.

Q: Political sphere might not be the easiest context for transatlantic integration. FTAs might be difficult. What needs to change first is the discourse around the US in Europe and the EU in the US. Is there a role for the transatlantic diasporas, Europeans in North America, North Americans in Europe, to participate in that change in discourse? After all, they are the main beneficiaries of free trade agreements through economic diaspora networks.

R: Prof. Egan said she does not think the public sees the values and benefits of such agreements, and that certain issues will be politicized, while benefits such as technical regulatory conformity and market access are sidelined. She argued that countries often engage in FTAs because of domestic structural reform, and therefore to successfully push FTAs there needs to be trade adjustment assistance. With regard to diasporas, it has worked well with the Northern Ireland Protocol, where the Irish mobilized in Congress to make sure the British would not get a free trade agreement unless the protocol was in place and worked in the Good Friday Agreement. There is also a territorial dimension to take into consideration. During the USMCA negotiations there was a lot of engagement with the provincial premiers and US governors. Consequently, Prof. Egan argued that beyond the diaspora, territorial sub-national actors should be taken into account.

Q: In order to avoid increasing the disorder of multiplication of agreements and their rules of origin and standards, would we be better off encouraging broader membership in the CPTPP and then using whatever Atlantic cohesion we can muster to influence what goes on in the CPTPP?

R: Ms. Tabet noted that it will be important to wait and see if the US actually decides to join CPTPP. Countries such as Japan want the US to join, however, at this point in time it remains an open question on whether they will. Some believe US joining would be a good counter to China and signal the US is again looking to sign trade agreements. US did set a lot of the agenda and content for that agreement, so joining it would be a logical step next step.

Q: I have observed that there is less and less public support for large multilateral trade agreements. In fact, there is deep scepticism, in all parts of the Atlantic-sphere. This is particularly so because they see current multilateral institutions as far less than effective in regulating trade and the movement of capital and IP (in particular). Why shouldn't we invest our time and effort in making existing mechanisms work better, rather than trying to create something new that would be really difficult to actually get ratified?

R: Prof. Atikcan stated Canada having a more active role could be seen as a fresh angle and take some tension away from existing sensitivities between the EU and the US. Canada taking a leading role could also diffuse to a degree the TTIP issue, and there is also the possibility that it could influence a bottom-up grassroots approach which is inclusive to civil society, diasporas and various associations. There have been calls in previous treaties for transparency in negotiations, therefore, more transparency is another way such an agreement can gather popular support.

Prof. de Mestral added that while he is not convinced building on to and expanding existing institutions and agreements will work, namely WTO and CPTPP, it is a plausible and sensible strategy to pursue, as an alternative to AFTA. The interesting aspect of CPTPP is that expanding it would be seen as a clear challenge to China, particularly concerning expansion of Asian membership as a counterweight to the RCEP. It would send a message to China that it is not pushing sufficiently high enough standards. While it is not clear how the UK would join the CPTPP, Prof. de Mestral acknowledged that it has stated its intent to join it, which at the very least demonstrates its potential to become a global agreement with wide membership.