

TA Debate Trade Minister
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Appleton, square off over
pier II. Page C19

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C19

Canada is encouraging old-fashioned trade barriers

BY BARRY APPLETON

Canada's growing economic success depends upon our network of international trade agreements. They allow Canadian businesses to operate fairly and freely abroad. They protect Canadians from unfair government actions that could be targeted at them because, as foreigners, they have less political clout than domestic companies. Under the World Trade Organization or the North American Free Trade Agreement, Canadian businesses win or lose based on their services and their products. Companies operating in Canada are entitled to the same protection. That is as it should be.

But these international investment protections are under attack. And in Ottawa, the federal government — with its cam-

NAFTA TRIBUNAL DECISIONS ARE BASED ON INTERNATIONAL LAW THAT STRETCHES BACK OVER A HUNDRED YEARS

paign to alter the Chapter 11 investment section of NAFTA — is leading the attack. As in other international agreements, NAFTA's Chapter 11 includes terms that protect Canadians investing abroad from unfair government practices and ensures that Canadian investments are treated as if they were domestic competitors. To receive these benefits, Canada, in turn, must treat foreign investments as fairly.

That's the clear black-and-white intent of the words in the NAFTA agreement, signed openly and with full knowledge by the governments of Canada, the United States and Mexico. Now, suddenly, Trade Minister Pierre Pettigrew and the federal government want to change the agreement. Recently, Mr. Pettigrew announced that he would seek "clarifications" to the NAFTA to ensure that its investment protections better reflected

NAFTA's true "intent." To those uninitiated to trade diplomacy, this simply means Mr. Pettigrew wants to amend NAFTA.

The government argues, for example, that NAFTA tribunals under Chapter 11 have overstepped their authority and come to unreasonable conclusions on the meaning of international law. This is completely absurd. The tribunals have uniformly consisted of persons of great knowledge and experience in international law; many have been appointed by Canada directly. Their decisions have not been revolutionary, as the government implies, but based on solid international law that stretches back over a hundred years. NAFTA's text specifically mandates these international trade law principles. This is exactly what NAFTA's framers intended. There is no mysterious conflict between the drafters' intent and the tribunal rulings.

Ottawa suggests that the NAFTA tribunals somehow impede government's ability to make policy in Canada. In the Metalclad case, a Mexican municipal government closed down a foreign investment that supposedly did not comply with a secret municipal law. The NAFTA tribunal properly found that it was unfair under international law to expect a foreign company to comply with an undisclosed law. Mexico challenged this decision before a Canadian court, and Canada supported Mexico, calling the requirement for public disclosure of law to be the "most egregious error." Since when are due process rights and transparency contrary to Canadian values and public policy? Are these not the very same values that our government seeks to promote for other countries, in other international agreements?

In the S.D. Myers case, the NAFTA tribunal found that Sheila Copps, then Minister of the Environment, tried to justify a specifically anti-U.S. trade barrier targeted against one U.S. company in Canada as a legitimate environmental policy. Unfortunately, Minister Copps' own officials saw through the policy, telling her that her option was neither environmentally sound nor justifiable. Nonetheless, she unlawfully issued an export ban that may subject Canadians to upward of \$100-million in damages. How does victimizing our neighbours

because of their nationality foster sound Canadian public policy? Taken in their totality, Canada seems more concerned with appeasing domestic political interests or furthering personal political agendas than promoting our businesses abroad in principled fashion.

Free trade has been successful in bringing jobs to Canadians, energizing our economy and spurring domestic innovation. Governments should focus on the prosperity created for all Canadians as a result of the investment protection and promotion provisions in trade and investment agreements. Canada's new policy of undermining NAFTA through secret back-room agreements is simply shortsighted at best. Changes in Canada's position send the wrong message to Canadian investors, and would undermine the promotion of investment and trade in the hemisphere. They also dissuade sound public policy

CANADIANS MUST QUESTION POLICIES DESIGNED TO HURT OUR COMPETITIVENESS ABROAD

by encouraging the creation of old-fashioned trade barriers.

At a time when our economy is in trouble, Canadian citizens must question policies that are specifically designed to hurt the competitiveness of our companies abroad, or to harm investments made by our closest trading partners in Canada. If Mr. Pettigrew is successful in his new crusade, not even a hundred Team Canada trade missions, with a thousand premiers following in tow, could undo the damage caused by Canada's most recent trade policy folly.

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