

# Information Bulletin

NUMBER 146 • OCTOBER 2010

## **A CN Trade Relations Forum Canada's International Trade Agenda: Alberta's Interest and Influence**

Thursday, September 30, 2010

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## Library and Archives Canada Cataloguing in Publication

Weekes, John, 1943-

A CN trade relations forum [electronic resource] : Canada's international trade agenda : Alberta's interest and influence / John Weekes.

(Information bulletin ; no. 146)

Type of computer file: Electronic monograph in PDF format.

Issued also in print format.

ISBN 978-1-55195-806-4

1. Alberta--Foreign economic relations. 2. Alberta--Commerce.  
3. Canada--Foreign economic relations. 4. Canada--Commercial policy.  
I. University of Alberta. Western Centre for Economic Research II. Title.  
III. Series: Information bulletin (University of Alberta. Western Centre for Economic Research : Online)  
no. 146

HF3229.A5W44 2010a

382'.6097123

C2010-906835-1

### John Weekes Biography

#### Education

University of Toronto, BA (Hons., Political Science and Economics)

#### Profile

A veteran of 39 years in the field of trade policy and negotiations, John Weekes provides advice on a broad range of international trade issues and other policy matters to clients in business and government. Mr. Weekes participates regularly in conferences on the challenges facing the trading system and related political issues and contributes articles to newspapers and magazines.

Prior to joining Bennett Jones, Mr. Weekes was Senior International Trade Policy Adviser (2003-2009) at Sidley Austin LLP, based in the firm's Geneva office. He still acts as an adviser to the firm. From 1999 until 2003, Mr. Weekes was Chair of the Global Trade Practice at APCO Worldwide, a Washington-based international public affairs and communications consultancy.

Over a period of 20 years Mr. Weekes served the Government of Canada in numerous senior positions in the field of foreign economic policy. He was Canada's Ambassador to the WTO from 1995 to 1999 and Chair of the WTO General Council in 1998. Mr. Weekes served as Canada's Chief Negotiator for the North American Free Trade Agreement (NAFTA), including for the side agreements on environmental and labor co-operation. He was Ambassador to GATT during the Uruguay Round of multilateral trade negotiations and Chair of the GATT Council in 1989 and then of the GATT Contracting Parties in 1990. In the 1970s he participated in the Tokyo Round of GATT negotiations.

Mr. Weekes is an active member of the Board of the Alberta Livestock and Meat Agency. He is a Senior Adviser to the Shanghai WTO Affairs Consultation Center and serves on the Board of the Washington-based Cordell Hull Institute and the Management Board of the Advisory Centre on WTO Law in Geneva. In recent years Mr. Weekes has participated in the WTO dispute settlement system as a panel chair and an arbitrator.

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## Welcome

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### **Rolf Mirus:**

Welcome to our CN Trade Relations Forum with John Weekes. This is our first CN Trade Relations Forum of the academic year. Many of you attended our previous forums with David Emerson, and Pierre Pettigrew, former Foreign Ministers and International Trade Minister. We have had representatives from the United States including Grant Aldonas, former Undersecretary of Commerce, as well as some private sector representatives including Peter Kruselnicki from TransCanada Corporation. These sessions and my position CN Professor for Canada-US Trade Relations are made possible by the support from CN.

We will have a presentation that will run approximately 20-25 minutes by Mr. Weekes. There will be quite a substantial question and answer session following that, so you'll have the opportunity to ask Mr. Weekes your questions. Mr. Weekes will speak on Canada's International Trade Agenda: Alberta's Interest and Influence.

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## **John Weekes: Canada's International Trade Agenda: Alberta's Interest and Influence Notes for the Presentation**

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There are two broad subjects that I will address. The first is the increasingly active international trade negotiations agenda, and the second is how the subject matter of trade negotiations and policy is expanding into areas well inside provincial jurisdiction. But before getting into these, I would like to preface my remarks with some comments about US trade policy today. I think it is quite relevant to consideration of these other issues.

One of the reasons people have not heard as much as they have in the past about trade negotiations and trade policy is because the Obama Administration has withdrawn from the field and focused on domestic issues. This is not surprising given the attention on issues associated with the recession and financial crisis. When Senator Obama was campaigning for President, many of the themes were similar to those in 1992 when Bill Clinton was running for the same job. Like the current Administration, the Clinton administration also set off with some very bold domestic policy objectives - which they did not achieve. I suspect that a number of Democrats, and probably a number of people in the Administration, believed that the reason the Clinton Administration didn't succeed, for instance in health care which of course was the special task of Hilary Clinton, was that they were diverted onto other issues. These included fighting the battle to get the NAFTA, and the legislation to implement it, through Congress, and also completing the WTO. Both those agreements,

particularly the NAFTA, were very controversial politically and, perhaps more important, divided Democrats.

When President Obama was elected with a good Congressional majority, including a near super majority in the Senate, I think he and his team made a strategic decision to use these majorities to achieve some objectives in the domestic policy arena, plus, given the times, to pass some necessary economic measures. They would deal with trade later. They paid lip service to trade issues, but basically they were not interested in having any trade matter come to a head if it would require difficult decisions or involve big political battles which would divide the Democratic Party.

Now we are on the eve of the midterm elections. It looks like the situation is going to change rather dramatically. We will probably see a Republican majority in the House. We may well see significant Republican gains in the Senate, perhaps even Republican control of the Senate. And, of course, Republican congressmen are, by and large, more well-disposed to trade liberalization and the pursuit of trade negotiations than are their Democratic colleagues. By the middle of November, we may start to see some signs of significant change in the Administration's approach to trade negotiations and trade policy, and a new willingness on their part to get more vigorously engaged. Now one of the first occasions when we might see if this is happening, is the G20 summit of leaders in Seoul, South Korea. This Summit takes place the week after the US elections. One of the issues that the leaders will talk about at that meeting is the WTO negotiation, the famous Doha Round, the one that leaders have pledged over and over again to complete, urgently and by fixed dates, and yet nothing has ever happened. You have to ask yourself, why has nothing happened?

The negotiators are bright people. They know what they are doing. They know how to put an agreement together. They can see what the scope of the outcome needs to be. The negotiators need some political direction on the changes needed to make a deal. I submit to you that the real reason that there has not been an agreement yet is that the leaders did not really mean what they said when they said they intended to complete the negotiations. They didn't really want to complete the negotiations.

In each G20 country, completing the Doha Round is going to present certain complications that must be addressed at the domestic level. None of these governments wants to address those until it thins the moment is right. The situation of Canada illustrates the problem. If Canada wants to finish negotiations in the WTO, we are going to have to make some concessions in the supply management sector. This is

inevitable. We are the only one of the 153 members of the WTO that are objecting to the framework that would require some liberalization of Canadian dairy and poultry imports. So what does the government say? They say that we need a very ambitious outcome in the negotiations. It is only with a very big outcome that you can manage the political opposition from groups affected by some liberalization in the area covered by supply management. There is not much prospect of a Canadian government standing up and saying what their final position is going to be in the Doha Round until they know they are in an end game scenario. And nobody is going to see an end game scenario beginning until the US is ready to enter that scenario.

Now let me turn to a broader look at the international trade agenda and Canadian interests. The single most important thing in the trade policy area would be a successful completion of the Doha Round. This would bring major benefits and allow the WTO to go on and start looking at some of the new issues that it should be addressing including, very importantly, the relationship between the carbon reduction world and the world of trade regulations and border measures.

In addition to the Doha Round, we have many other negotiations on the agenda, including the Canada-EU negotiations. This is a very significant negotiation for Canada and with a lot of big Alberta interests involved, among them some which I watch up close, in the meat and livestock area. It is difficult to get all the different organizations that represent beef interests in Alberta and Canada to see things in exactly the same way. But they do agree that a major liberalization of the European market for Canadian beef exports would yield significant economic benefit.

Just last week, the trade ministers of India and Canada announced that they intend to initiate negotiations of a comprehensive economic partnership agreement which, I believe, would also include a free trade agreement.

We also have the Trans Pacific Partnership. Trans Pacific Partnership? This is a little known negotiation that started a few years ago between New Zealand, Brunei, Chile, and Singapore. Those four countries believed they could pioneer an agreement that could become a template for a new agreement for broader liberalization of trade within the Asia Pacific region that dealt comprehensively with all areas of trade. So they started the negotiation and invited other countries to join. They invited Canada. But we said, "You don't really mean complete liberalization of all agricultural trade?" When it became clear that they did and given that we didn't see these four countries as being of strategic significance, we said,

“Thank you very much, we will think about it.” We distanced ourselves from the project. Until guess what happened? The Obama Administration came along--and this is where you can begin to see the seeds of development of new elements of American trade policy. The Americans decided they would like to enter these negotiations. They saw the opportunity to engineer a template for a new partnership in the Asia Pacific region. And do not forget the Americans are chairing the APEC conference next year. They are thinking about what they can do on that occasion that is appropriately presidential and leadership oriented for a president that is going to be running for re-election shortly after that. This is a significant development. The US is now engaged in this game. Suddenly this is not just those smaller countries. We rightly do not like the idea of other countries having a better trade agreement with the US than we do. And yet this is a real possibility.

I was in to see the new minister counsellor economic at the US embassy in Washington last week. She reminded me, perhaps recalling that I had been the NAFTA negotiator, that the new gold standard in US trade agreements was their agreements with Korea, mind you they haven't been able to implement it yet, and with Panama. When they are looking at agreements, the Americans are no longer thinking of the NAFTA as the template. They are looking to build something new that will go beyond the NAFTA, and if Canada wants to come to the table, then Canada must accept that it is prepared to do more than we did in the NAFTA.

So we see people in Ottawa scrambling. Minister van Loan seems to be undecided. He says we have not asked to participate but clearly we would really like to be there. The government is worried how it positions itself because it might look like a political failure if we are excluded. It will be a very serious matter if we are excluded. Now other Asian countries are looking at this agreement. Malaysia is on the verge of joining in this negotiation. The new Japanese trade minister was musing to the press about the possibility of Japan getting involved. If we have aspirations to be an active economic partner in Asia and the Pacific, or even in North America, we cannot afford not to get into that kind of negotiation.

This gives you a sense of how very active today's trade policy agenda is.

Now let me say a few things about how the scope of what is being dealt with in trade negotiations and how it is evolving into areas of provincial jurisdiction. We have known this has been happening for some time. However, now for the first time at the negotiating table, we have seen our major partners, the US and now the EU, telling us that if we want

to achieve certain objectives, we must be able to offer in return commitments from the provinces in particular areas of their responsibility. Government procurement is prominent among them. This development creates a new dynamic.

Trade agreement negotiations are also going into other areas of provincial jurisdiction such as: technical barriers and regulations, movement of people and professional accreditation. There is a much more complicated agenda. There has been edging into provincial areas since the NAFTA with environment and labour. But what has happened now is our partners are telling us, if you want this new agreement with us, then you are going to have to address certain provincial measures as well. This creates challenges for provinces but also big opportunities.

Think of the Canada-EU negotiation. One of the important things that has happened is that the federal government has agreed to have the provinces at the negotiating table. The challenge is that it puts the negotiations for the provinces at a different level. It is not like the old days in the distant past when the federal government had consultations with provinces. The federal government would listen politely to what the provinces said but in the final analysis, the federal government was holding all the chips. The provinces were kibitzing. The provinces gave good advice and it was welcomed. Suddenly it is much more than that. Now it is about commitments that are necessary to conclude the deal. This creates new governance challenges—how the provinces manage the negotiations and then implement these commitments after the agreement is concluded. It also creates opportunities because the provinces are in a much better position to insist on having Canada's partners address those issues that are important to them.

Think of agriculture. Some of the biggest sensitivities in the Canada-EU negotiations are in agriculture. Surprise, surprise. On the Canadian side it is our old friend supply management. The EU would like to make inroads to our cheese markets. In terms of our export interests, guess what the two biggest sensitivities in Europe probably are? Beef and pork. If it had been an old style negotiation, I suspect agriculture may have been looked at from a sectoral perspective. Canada would have had to do a little bit on cheese and the EU would need to do a little something on meat products. But now the situation is that Alberta and other provinces can say, "Wait a minute. Beef is important to us." I don't write the provincial negotiating positions but I think beef is very high in terms of the priorities in that market. The protection is high and the rewards of access are very big. The provinces are in a better position to insist on their issues in these negotiations. The EU's number one priority in these negotiations is government procurement; they want access to provincial



and municipal procurement--contractual access. They want it nailed down and locked in with legislation. This creates leverage for Alberta and, say, Saskatchewan which also exports beef. These provinces can say, "You want that, you are going to have to do this." This is a new healthy development.

There are other significant developments that could impact the management of trade negotiations in Canada. You may be familiar with the Federal government project to establish a national securities regulator. This has met with opposition, particularly in Alberta and Quebec. The project is being challenged in the courts by Alberta and Quebec and is also a subject to a reference to the Supreme Court by the Federal government. One of the key areas on which this Court consideration is going to turn is the scope of the federal trade and commerce power. It will have implications that go well beyond the securities sector.

Another area that is of considerable interest and attracts a lot of attention is the NAFTA provision (now incorporated in other trade agreements) that deals with investments and investor state dispute settlement. You may be familiar with the Newfoundland and Labrador case in which the provincial government took over the assets of AbitibiBowater after the company said it was ceasing operations in Newfoundland. This American company brought a complaint against the government of Canada under the investor state dispute settlement provisions. When the Canadian government saw how weak its case was, it decided to settle out of court, for a \$130 million dollars! This was embarrassing. The Prime Minister is reported in the press to have stated that the Federal government is going to develop a mechanism with the provinces to insure that the provinces will be the ones to pay if this sort of situation occurs in the future.

There is a long standing objective of the Alberta government to negotiate an internal agreement with the Federal government and the Provinces on the conduct of international trade negotiations and how to address provincial participation. I think, based on some of the things I have just described, this is a project whose time has come. In the coming months, we may well see an effort to negotiate this and to put it in place. I suspect that the response at the Federal level will be a lot more forthcoming than it has been historically.

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## Questions

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**Question: Bob Ascah** (Director, University of Alberta's Institute for Public Economics): "Can the US say 'no' to dirty oil under the NAFTA agreement?"

**John Weekes:** "I don't think that they want to. This could be an issue for dispute settlement; and an interesting question would be whether it would be a dispute taken under NAFTA or the WTO, given the history of such disputes. Canada has never used the mechanism under the NAFTA for resolving disputes about the interpretation of the agreement. This sort of dispute might well end up in the WTO system because that system is better articulated. In the NAFTA, disagreement about panel selection can stop the process. Plus, the NAFTA really has no administrative body, unlike the WTO which is well institutionalized and constantly busy with cases. The only time Canada is likely to use the NAFTA is if the dispute were to turn on a provision unique to the NAFTA. "

**Question: Barry Scholnick** (Associate Professor, Alberta School of Business): "Given the Liberal-Conservative divide in Canada, and the fact that the Conservatives cast themselves as the party supportive of rural issues, how can we expect great progress to be made on files like agricultural trade?"

**John Weekes:** "So, can change happen? Well, it can but it is fairly infrequent. For instance, the Crow Rate was a huge shift in Canadian agricultural policy and it is a change of that magnitude that would be necessary for crucial changes to be made in our outdated supply management system. The domestic system regarding supply management has to change. The new generation of farmers is frustrated by its shortcomings. These sorts of pressures will eventually bring change here."

**Question: Greg Anderson** (Research Director, Alberta Institute for American Studies): "Where is the 'silver lining' you referred to earlier [in your talk] in the recent growth of Republican power in the US? On the trade front, it would seem non-existent as the far Right appears to be fairly anti-trade?"

**John Weekes:** "The Administration would need to work with moderate elements of both parties and generate a bipartisan approach. There will be more dispositions to pursue trade liberalization with a larger number of Republicans in Congress who tend to be more open to trade liberalization and trade negotiations than their Democratic counterparts. "

**Question: Audience Member:** “Why wouldn’t more centralized national power be good on many trade issue fronts? Why wouldn’t centralizing something like Canada’s Securities Commission be logical?”

**John Weekes:** “Well, it might be but the exercise of increased Federal power would certainly cause friction in federal provincial relations. One could ask whether is it fair for the Wheat Board to force Western Canadians to purchase from the Board only? In effect it can stop new firms from setting-up. For example, a few years back a new malting plant was going to set-up in the Alberta but in the end the investor concluded it didn’t want to be dependent on a sole source for its purchases of barley. The project was abandoned. If the proposed investment had been in Ontario the plant could have sourced its barley from anywhere. Is that fair or right; is it constitutional”

**Question: Audience Member:** “What is so good about so much power residing in the provinces in relation to Federal power?”

**John Weekes:** “Well, a concerted, collective approach is useful with regard to trade issues in Canada. A combined effort between the Provinces and the Federal government is better than a fight over where the power should reside.”

**Question: Steven Lakey (SKL Enterprises):** “How should Canada deal with negotiating with countries of many, many more people -- China, India and such?”

**John Weekes:** “The ‘BRIC’ nations (Brazil, Russia, India and China) already play a prominent role in the trade system. When we first started serious discussion about freer international trade, the EU, the US, Japan and Canada accounted for roughly 80 percent of global trade. Now we are less than half, maybe about 40 percent.

“The world is a much different place. Human resources are going to be more important than natural resources. Look at Korea – they have relatively few natural resources and look what they have done. Look at China, though they do have resources, what they have done with their wealth of human resources. It is unbelievable. In Canada, we need to do more analysis of what will be important in the next 50 years. (For example, see the Report *Open Canada*, by the Canadian International Council. We need more work like this.)”

**Question: Joe Rosario (Senior Economist, Western Centre for Economic Research):** “The bureaucrats within organizations like the WTO have been very active and seem to have reached agreement or consensus on most of the thorny trade issues, like special safeguard measures. Why has not more been done by leadership on the free trade front?”

**John Weekes:** “There is this new ‘G5’ (the US, EU, China, India and Brazil) -- which is like the old G4 (the E.U., U.S., Canada and Japan)--and it can influence the direction of discussions. At this point in the Doha Round many think that there will have to be a meeting of the minds between the US and China. The EU is prepared to accept the sort of deal that was on offer in 2008. India would like to see a deal concluded too. Brazil will also be inclined to agree as they want something to happen on agricultural trade.

“On the more technical matters, we can see what needs to be done, say on special safeguards. There is agreement at the technical level, but the politicians have to publicly accept this. But they will wait for the proper time, when it becomes clear that there is a real interest in finishing the job.”

**Question: Audience Member:** “What would you say is the chance of beef going into the EU freely, given their sensitivity to GMO issues, hormones and such? Would there be a strong reaction?”

**John Weekes:** “Good question. That is why we don’t grow GMO wheat as there is a fear of being shut-out of markets elsewhere. We already produce and sell in Europe some non hormone treated beef. Consumers are changing things. People, more than ever, care about what they consume. There is an opportunity here to differentiate our product from our competitors and compete successfully.”

**Audience Member (follow-up):** “Antibiotics too?”

**John Weekes:** “Yes, that is happening too. “

**Audience Member:** "I am interested in the possibility or potential for the development of a water market in Alberta. I guess, more specifically, if you think we could see the bulk export of Alberta water?"

**John Weekes:** "Well we already export water in various agricultural products so we have markets available already. But I do not see any prospect of bulk exports of water, of, say, re-directing the Bow River to satisfy water needs in the US."

**Audience Member:** "I'm interested in pursuing further what you would define as co-operation on Federal and Provincial trade issues and whether you have any actual examples of that? Climate change was certainly not one of these co-operative efforts."

**John Weekes.** "While not recalling the specifics right now, I do remember suggestions by the provinces about how to codify the sort of practical cooperation that was then taking place. These proposals would have led to arrangements with explicit guidelines and formats regarding such cooperation in the field of trade negotiations.

Climate change is not a good example because the UN structure of negotiation does not really work well for this sort of subject. The negotiations on climate change are a bit like trade negotiations in that they are intrusive domestically, and to be implemented require domestic legislation that will have a negative impact on at least some constituents."