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A CN TRADE RELATIONS FORUM

**OPPORTUNITIES AND RISKS:  
CANADA'S TRADE POLICY IN TROUBLED SEAS**

**Presented on November 24, 2011**

*John Weekes  
Senior Business Advisor  
Bennett Jones*



**Western Centre for  
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### John Weekes

A veteran of 40 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. 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 frequently assisted Canadian ministers with trade policy issues including their relationship with domestic policy matters. He represented Canada in trade negotiations and at international trade meetings. 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. 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 also 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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**A CN Trade Relations Forum, November 24, 2011**  
**Opportunities and Risks: Canada's Trade Policy in Troubled Seas**

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*The following text is based on an oral presentation made by John Weekes to the CN Trade Relations Forum on November 24. Mr. Weekes, a senior business adviser at Bennett Jones LLP, was Canada's ambassador to the WTO and chief negotiator for the NAFTA.*

Thank you, Rolf, for giving me the opportunity to come back again to the University of Alberta. I must say that I find it useful to give a public presentation because one has to gather one's thoughts together and focus on what's both interesting and relevant.

My topic today is: "Canada's trade policy in troubled seas". We decided on the title -- Rolf and I -- back in August when I realized that I'd be doing a number of things this fall, so I thought: 'let me pick a topic now that it is likely to still be relevant when we get to the end of November' and indeed I still think that this is a good subject.

I'd also like to talk about some of the pressures that are out there in the global trading system, especially the kind of protectionist pressures that have arisen as a result of the economic crisis. I'll speak to Canada's trade negotiations agenda, and where that fits in the Harper government's priorities. I'd also like to talk about the WTO. But, in doing so, I think it's important to take one step back to provide some perspective. There will be a Ministerial Conference in the WTO next month. We need to recognize that the WTO is more than just the Doha Round of trade negotiations which is in so much difficulty at the moment

Let me start with the big picture. I recently reviewed some of the G20 heads of government communiqués to see what exactly the leaders had said at their recent meetings and compared that with what actually seems to be happening. The conclusion isn't a very pretty one. A year ago the G20 heads of government undertook in their meeting in Seoul, South Korea, to avoid new trade measures, and they stressed their commitment to keeping markets open and liberalizing trade and investment. In real contrast to that, on October 25 (less than a month ago), the WTO, the OECD, and the UNCTAD, came out with their regular report monitoring measures that have been taken by G20 countries, which they started doing in the aftermath of the financial crisis in 2008. I think it's safe to say that this is the gloomiest of all the reports these organizations have made since 2008. And the heads of the three agencies, in their introduction to the report, said the following:

"Trade protectionism is gaining ground in some parts of the world as a political reaction to current economic difficulties." And they went on to say "the situation is not yet alarming but it is clearly adding to the downside risks to the global economy."

These statements are always put together very carefully because nobody wants to sound alarmist, so I think that is about as far as they can go without

saying 'we're in real trouble'. And so what happened a week or so after that report was released? The G20 leaders met again in Cannes, France and they simply reiterated their earlier commitments to avoid protectionism and not turn inward. It is better they do that than the contrary but I think we're at a very difficult point where the fabric of the system is definitely being tested.

Regarding the WTO negotiations, the G20, after repeating on many occasion their intentions and their instructions to their ministers to finish the negotiations quickly -- and nothing happened -- have finally backed off these exhortations. They really didn't have much choice. After what the Director-General of the World Trade Organization said to the Trade Negotiation's Committee in Geneva on October 21, they weren't left with much room to be optimistic. At that meeting, Pascal Lamy said, "The Round is at an impasse so as a consequence it is unlikely that we will conclude the negotiations on the Doha agenda in the near future." So that actually led to a bit of shifting gears in terms of what the G20 leaders said in Cannes about the WTO negotiations. They said they were in agreement to stand by the mandate of those negotiations and instructed their ministers to pursue, in 2012, "fresh credible approaches to furthering negotiations", and I think, more importantly, they asked their ministers "to engage into discussions on challenges and opportunities to the multi-lateral trading system in the globalized economy

Let me turn to Canada and to the trade negotiations agenda of the government. The government has repeatedly called it an 'ambitious' trade negotiations agenda. If you look at the statements that were made during the election campaign, at the Throne Speech, and at the Prime Minister's website, you see this trade negotiations agenda is put very much at the centre of the Government's top priority: jobs and growth. And for those who believe that trade liberalization, more rules, and opening markets for Canada are important, all this is welcome news. Look at the number of different negotiations that the government is engaged in, or that are planned. It really is an impressive list.

It starts with the United States, where Prime Minister Harper and President Obama launched work on the perimeter security and economic competitiveness agenda, when they met in February. And it's generally expected that there will be some kind of announcement from the President and the Prime Minister about the progress that has been made in that work and that this announcement will probably occur in early December. I think this will largely be good news, but in the absence of hearing what they have accomplished, it's perhaps too early to make a definitive observation. I think also that what we will be presented with in this announcement, will be progress but it won't be the end result, it will really be a stepping stone in a work program that will become better defined and continue forward for a couple of years. But nonetheless I think this is important and should be a very welcome development.

The government is also engaged in a negotiation of what's called a comprehensive economic and trade agreement with the European Union. These negotiations have now reached a stage at which we will begin to see the real

colour of the money. The general expectation is that these negotiations will come to a head in the first part of next year. I think this is a particularly important test for the Harper government's trade agenda because so much emphasis has been put on these negotiations. The European market is a very important market for Canada, very important for Alberta, and for agriculture in Canada. We may well see before the middle of next year, whether this goal is a realizable one and whether the quality of the agreement that results is good or not.

If we don't succeed there is another risk. The United States might come along and decide to negotiate such an agreement with the European Union and I don't think we would want that. This is one of the problems we face in today's world. It used to be much more straight forward when we were in a world where trade negotiations, or most of them, took place in the GATT and then the WTO. Markets were opened for everybody on the same basis. We now have a more bilateral or regional approach that some Americans have called "competitive liberalization". Each country is jockeying for position, moving ahead of the others and seeing how well it can open markets for its producers. For a few years this looked like a pretty good deal because Canada was ahead of the United States in negotiating bilateral trade liberalization. The Clinton administration was bogged down and not able to get negotiating authority. More recently the Obama administration seemed pretty ambivalent towards trade, although that seems to have changed somewhat as of late.

When others get ahead of us in the trade liberalization game we have a serious problem. We've seen what can happen in our trade negotiations with Korea. These negotiations were launched in 2005, we made very good progress through, I think it was, 13 rounds of the negotiation, until the middle of 2008 when things ground to a halt, largely because we didn't know how to get over certain issues that came up in the context of automobile trade. There were a few other matters as well, such as the Korean embargo on Canadian beef as a result of the appearance of BSE in Canada. There were some in the cattle industry said, well, let's not finish those negotiations until we sort out the BSE embargo. We have never resumed these negotiations. Now the United States, which started negotiations with Korea after we did, has completed an agreement, ratified it, and implemented it. Under this agreement, American producers of various products, including beef and pork will get preferential access to Korea, as compared to their Canadian competitors. Those Korean barriers, many of which are very high, in the 40% range, will be eliminated over a transition period but Canadian suppliers will continue to pay those high duties. That is the price we pay for not having been able to conclude our agreement with Korea. If you don't really play hard in this competitive trade liberalization game and at least keep abreast, if not ahead, of what other countries are doing, you wind-up in a situation where you're going to be left out in the cold. That appears to be what might be happening with us on Korea, although there are a lot of people going to Ottawa these days, particularly from the agricultural community -- not the

supply management people [laughs] – urging the federal government to re-engage the negotiations with Korea.

Let's take one step back to look at the government's trade negotiations agenda. So far Mr. Harper's government hasn't concluded a single trade agreement with a major country. The example of what's happened with Korea is disquieting. It doesn't instill confidence that the government is going to carry through with these other agreements if it turns out that some Canadian constituents don't like what the outcome might be. If we don't go through with these agreements we are going to see erosion of our markets. So we don't just miss the prize for finishing a negotiation, there is now going to be a penalty for not concluding it. That's the nature of this competitive liberalization environment in which we're now operating.

We have free trade negotiations underway with India. That's a big potential market. Those negotiations are not going to be easy but they are important.

We are still in the final stages of completing a joint study with the Japanese of the benefits of a free trade agreement with Japan. That could be a very important agreement. It would raise some of the same problems, frankly, that the Korean negotiation has raised. It would be very interesting for a number of producers, including agricultural producers, to get into that market with its high entry barriers, but the automobile producers might be a little bit worried about what the impact is going to be on them.

With China, the government has now concluded that further developing and strengthening relations is a priority. This is a very welcome development after a few years of uncertainty about the government's approach. That now seems to be behind us and there is clearly a lot of opportunity. I have suggested we should be working in the direction of a free trade agreement with China. While I think that's still some distance off, there is a lot of scope for working with China to improve economic and trade cooperation in various sectors. That could bring a lot of benefits for Canadian producers and consumers.

We are also having exploratory discussions with Mercosur in Latin America. Mercosur, as you know, is the customs union of Brazil, Argentina, Uruguay and Paraguay. That could be another potentially important market for Canadian exports.

And lastly, in terms of the elements of this agenda, let me recall that Mr. Harper announced Canada's willingness to join the TransPacific Partnership negotiations on November 12th when he went to the APEC heads of government meeting in Hawaii. These negotiations, now being promoted enthusiastically by the United States, also include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The Japanese have just said they would like to join this negotiation. Mexico followed right after Canada. The United States sees these negotiations as the new "Gold Standard" in trade agreements. They claim it is going to be the "trade agreement for the 21<sup>st</sup> century" - the post-NAFTA version of what a modern trade agreement should look like.

Now it is significant that it is Mr. Obama's administration which has espoused this trade initiative as it didn't appear that his administration was a big proponent of liberalizing trade. I don't think much is going to happen in these negotiations over the next 12 months as we wait for the next Presidential election. But I do think that this negotiation is one which may well gain strength after that point. If Mr. Obama is re-elected, he's already committed himself to this project. I think he may well try and move that forward and complete that in his second term. If a Republican wins, then I think that the Americans will push this negotiation even more vigorously because the business community is strongly behind this.

I remember when I talked here last fall we speculated about what would happen in the US midterm elections and where the Tea Party members of the Republican Party would come out on trade. Well they have identified the trade issue in Libertarian terms. Far from insulating Americans from global economic activity, they see liberalized trade as offering choice to consumers. In Congress they voted to approve the trade agreements with Korea, Panama and Columbia. All this suggests that the TransPacific Partnership negotiations will gain momentum.

Although Mr. Harper said that we're willing to join, it is still unclear exactly how this process is going to unfold. Japan, Canada and Mexico have said they'd all like to join but they haven't got a definitive response from the parties who are now negotiating this TransPacific Partnership Agreement. I tend to think that Mr. Harper has probably had some assurance from the President of the United States that they would look favourably on us joining those negotiations but some of the other members have expressed some concerns. If you look at today's *Globe and Mail*, you'll see a report on a speech made yesterday by the trade minister of New Zealand in which he reminded his audience that an objective set by the leaders of the TransPacific Partnership countries was to eliminate duties on all products. He then turned to dairy where he said it wasn't clear to him whether Canada was prepared to eliminate all of its tariffs on dairy products in the course of the TransPacific Partnership negotiations; I think that's probably a fair statement.

I'm not going to go into it in depth today but supply management is clearly becoming more and more of a barrier to the execution of Canada's trade negotiations agenda. I believe that we've reached the point where we actually need to do some imaginative thinking about how to move the supply managed sectors from the current system towards something that will be more open but will be one that will ensure that the producers in those sectors will have a good future and with new opportunities. I believe that constructive change should be possible. I think it highly unlikely that anyone in the federal government will be allowed to work along such lines because of the political consequences of it becoming known that such work is underway. The Throne Speech makes it pretty clear that major change is not imminent.

Let me come back to the WTO. As I noted at the outset, the WTO negotiations are clearly in trouble. This makes it important to take stock of what the WTO is really about. We need to realize that the WTO is about a lot more than just the Doha Round negotiations.

First, the WTO is the world's basic trade agreement, among its 153 member governments.

Second, the WTO administers that agreement and all its various components. This administrative process has a large component of policy in it. Some of this activity has been neglected during the intense activity of the Doha negotiations. Governments now are recognizing the importance of making the administration work more effectively, including, significantly, in the area of notifications of agricultural programs.

Third, the WTO has a strong dispute resolution system which is really the international default mechanism for resolving trade disputes. Despite the growth of bilateral agreements, the WTO remains the basic dispute settlement system for international trade. The frequent use of the system by WTO members makes an interesting comment about the strength of the WTO and the confidence that its members place in it.

Fourth, the WTO reviews and monitors the trade policies of its members. I have already mentioned the recent report by the WTO and other organizations on trade measures taken during the recent economic crisis. This is a new function which in response to the current crisis has evolved from the Trade Policy Review Mechanism created during the Uruguay Round. It is positive to see how the WTO can respond and adapt and fill a niche in such an important area as helping to keep protectionism at bay.

Fifth, the WTO provides technical assistance to developing countries in terms of helping them integrate more effectively into the system.

Sixth, finally, I get to negotiations. The WTO provides a forum for negotiations. But it is not just a forum for multilateral trade negotiations like the Doha Round; it's also a forum for negotiating the accession of new members and for plurilateral negotiations. Since 1995 when the WTO came into force, twenty five new members have joined the organization. That is impressive. The WTO has gone from 128 members back then to 153 today with 30 more members in the process of joining. Three of them, including Russia, have basically completed that process and are expected formally to join the organization in the course of next year. The impact of these accessions is large. Nearly 20% of the world's trade in goods is generated by WTO members that have acceded to the WTO since 1995. So those 25 countries account for 20% of world trade in goods. About 10% of that trade is generated by China, but 10% of it comes from other countries. By any standard that is a pretty impressive accomplishment.

The WTO also deals with plurilateral agreements. One such negotiation is going on right now. Forty-two WTO member governments are renegotiating the Government Procurement Agreement (GPA) which is a plurilateral agreement, meaning it doesn't involve all members but it is still recognized as part of the



WTO system. That negotiation is coming to a head and there are expectations that it could be concluded in December. A lot of progress has been made and there's a good chance of an early success. The result would improve the provisions of the GPA and enlarge the coverage of the agreement to include more purchasing entities in its various member countries.

Finally, there are of course multilateral negotiations, like the Doha Round. Regarding Doha, I will be blunt. We will not conclude the Doha Round negotiations by continuing on with exactly the same agenda that was set in Doha. Something is going to have to change if we're going to bring those negotiations to a conclusion. There are a lot of valuable things in the emerging outline of the agreement that could be had under the right circumstances. It is important to figure out a way of completing that process and bringing those accomplishments home. I would like to remind an Albertan audience that one of those accomplishments would be the elimination of export subsidies on agricultural products, on which tentative agreement was reached at the Hong Kong Ministerial Conference in 2005. There was agreement on that important objective but only in the context of completing the Doha Round as a whole. Unfortunately we are now seeing some governments starting to use export subsidies again. Unless you nail down these things by binding them in contract, you have no assurance that the job has really been done.

The multilateral trading system has obviously changed a lot. The players are different. China has arrived in a big way. Near the conclusion of the Uruguay Round it became clear that the US and the EU would have to get together and figure out how to bridge their differences on certain key issues, particularly in agriculture. They did, and then other participants griped saying that these two had set the terms of the deal for everyone else. But it was concluded with a result that was largely beneficial for everybody. Today people are saying that maybe what needs to happen is that China and the United States need to figure out how to resolve their differences and then the rest of the pieces will fall into place. This change in who matters shows how things have evolved.

In addition, there are a number of new challenges ahead for the WTO. It's very important that the organization start talking about them because they are already being addressed by governments bilaterally and unilaterally. Let me mention some of them now.

First, I would cite the impact of carbon-reduction schemes at the border. The fuel quality directive of the European Union would be a case in point. You could also look at some of the things that Ontario has done recently and as a result of which Canada is now up in front of the WTO. The US, the EU and Japan have brought a complaint about the way in which the Ontario government has implemented some of its green energy policy programs. There are a lot of issues there that need to be addressed. It would be much better to sit down and try to look at how such issues should be addressed rather than using dispute settlement. Dispute settlement doesn't really provide definitive guidance as to what should be done; it just says what you're doing is wrong. Clearly there are

also risks of the WTO becoming known as the organization that blocks progress in terms of addressing carbon reduction. This is certainly how environmentalists would paint it.

Another new set of issues arises from the emergence of global supply chains. To a considerable extent we are not really trading in finished goods anymore, but rather in components of goods and services used in building finished goods. The WTO needs to take a hard look at the implications of this phenomenon for the disciplines we have now and consider what adjustments might be necessary or useful.

We also need to consider how to fit the growing number of regional and bilateral free trade agreements into the architecture of the global trading system. There has been discussion of that but we need a more fundamental look at the challenges this creates for the trading system and for traders.

We also see increasing concern about the security of supply of basic primary commodities both in agriculture and in the industrial sector and the growing use of export restrictions. Here again we are seeing such issues emerging on the dispute settlement agenda. Once again I would say that it would be preferable to have a discussion and perhaps a negotiation to address these issues, rather than ask WTO arbitrators to determine what to do.

These are a few examples of important emerging matters that are not on the Doha Round agenda, but which have been raised in the WTO. It is time the WTO developed a work program that will allow the organization to address these issues. I see no better place to start that process of thinking than at the Ministerial Conference in December.

So to conclude, we are here in Canada. We have a government that has an ambitious trade negotiations agenda. That is good, but it's not yet clear if the government can follow through and complete the negotiations that they have started. We are in a world in which competitive trade liberalization has become the way of doing trade negotiations. So, if we don't conclude trade agreements with other countries, and some of our main competitors do, we are going to lose out big time. This will be even more pronounced because we are no longer relying on the GATT and the WTO to negotiate trade liberalization, with its MFN principle to guarantee that all WTO members will benefit in the same way. And indeed, the WTO is in some difficulty, and I believe it is very much in Canada's interest to look hard at how we can strengthen the institution and reinvigorate its negotiating function.

Thank you very much.