

# States and Provinces in the International Economy

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## FOREWORD

An old saying among political scientists is that foreigners are more likely than natives to understand a country's political culture. They may even give respectability to or be the originator of facile, untested legends. But the principal contribution of an outsider is to raise questions, often embedded in sweeping assertions, that move insiders to confirm, modify, or refute the visitor's findings and conclusions.

We do not aspire to the role of Toqueville, Lord Bryce, or Lord Durham. We hope, however, that our collaborative examination of three specific aspects of Canadian and American federalism at work will bring to each participant, as well as to our readers, a clearer appreciation of Canadian and American government and politics. The give and take of our collaboration over the past five years has given us a clearer picture and a sharper background for observing the formation of new, and the total or partial dissolution of old, federal bonds all over the world.

The generic problem is the structuring and restructuring of conflict and controversy so that center, region, and locality participate effectively (not necessarily efficiently) and with at least a modicum of satisfaction to parochial and superparochial interests. In this sense, unitary governments are faced with similar conflicting interests without the formal admission of territorial constraints in their resolution. We are still faced with Harold Laski's question: what difference does federalism in any of its organizational manifestations make? We need more penetrating and detailed comparisons of interest articulation, policymaking, and policy implementation along a continuum from totalitarian central management to anarchy.

I hope that our transnational collaboration extending from the selection of topics and participants through collegial discussion and criticism of individual papers and their editing into a book (a process not at all unusual in academia), which we have enjoyed in the Canadian-American Federalism Project, can be continued. There are dozens of topics that need to be explored arising from Canada's ongoing search for an acceptable constitutional order. Likewise, in the supposedly stable American federal system, we are faced with the systemic strains and opportunities of our unstable intergovernmental relations (national, state, and local) as we move cyclically from the more passive (at least

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Note: Each author spells and measures in accord with his or her respective national custom, e.g., labour/labor, kilometres/miles, Canadian dollars/U.S. dollars.

ideologically) Reagan-Bush role of government to the promise of a more active role under Clinton and undoubtedly back again, but never to the *status quo ante*. All of this is occurring in both countries in the context of a globalization we cannot yet fully comprehend.

For the past five years, 18 Canadians and 21 Americans from 14 American and 11 Canadian universities have been exploring the differences and similarities in intergovernmental relations under the two neighboring federal systems. In fact, even more scholars have been involved since the workshops for the federalism project have been held back-to-back with the annual University of California seminars on federalism under the leadership of Professor Harry N. Scheiber.<sup>1</sup> Three independent critics have also been present at each workshop. We are grateful to the following for intellectual and social stimulation and for specific criticism of the papers: Jean-Pierre Gaboury (University of Ottawa), Thomas Anton (Brown), Ronald Watts (Queen's), Bruce Cain (Berkeley), Deal Wright (North Carolina), L. J. Sharpe (Nuffield College, Oxford), John Kincaid (U.S. Advisory Commission on Intergovernmental Relations), Peter Leslie (Queen's), and Henry Keith (U.S.-Canada Business Institute, San Francisco State University).

This series consists of three volumes. The first volume, *Metropolitan Governance: American/Canadian Intergovernmental Perspectives*, edited by Andrew Sancton (Western Ontario) and Donald N. Rothblatt (San Jose State University), examines the governance of metropolitan regions under the Canadian and American federal systems. Volume two, *States and Provinces in the International Economy*, is edited by Douglas M. Brown (Queen's) and Earl H. Fry (Brigham Young). Volume three, *Representation and Policy Formation in Federal Systems: Canada and the United States*, edited by C. E. S. Franks (Queen's) and David Olson (University of North Carolina at Greensboro), studies representation of regional and other interests in the two federal systems.

The Canadian-American Federalism Project was initiated and conducted by the Canadian Studies Program of the University of California, Berkeley. The cochairmen of the Canadian Studies Program,

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<sup>1</sup> The proceedings of these seminars on federalism have been published by IGS Press as *Perspectives on Federalism* (1987); *Federalism: Studies in History, Law, and Policy* (1988); *Power Divided: Essays on the Theory and Practice of Federalism* (1989); *Federalism and the Judicial Mind: Essays on American Constitutional Law and Politics* (1992); and *North American & Comparative Federalism: Essays for the 1990s* (1992).

Professor Thomas G. Barnes (History and Law), and Professor Nelson Graburn (Anthropology), have been supportive, encouraging, and demanding. We needed all three elements of oversight and are thankful to Professors Barnes and Graburn for their kindness and persistence.

The Canadian Studies Program for most of its life was part of the Institute of International Studies. It was a pleasure to work with its director, Professor Carl Rosberg, its assistant director, Harry Kreisler, and its managing officer, Karen Beros. The Canadian Studies Program continues under the university's International and Area Studies, headed by Dean Albert Fishlow. Literally, the project would not have survived without the 24-hour assistance and guidance of Peggy Nelson. Rita Ross, administrative assistant for the Canadian Studies Program, has been a capable and friendly successor.

The Canadian Studies Program has profited from the participation of scholars from other colleges and universities in the Bay Area. We are grateful to Ted Thomas (Professor of Sociology and Provost of Mills College), Donald Rothblatt (chairman, School of Urban and Regional Planning, San Jose State University), and Calvin Massey (Professor of Law at Hastings College of Law, for participation in the federalism project.

The Institute of Governmental Studies (IGS), both under its former director Eugene C. Lee and its current director Nelson W. Polsby, has served *de facto* as a second home for the federalism project and in fact for the entire Canadian Studies Program. Without its in-kind support (paper clips, office spaces, xerox, telephones, library, etc.) I should not have been able to formulate and manage the Canadian-American Federalism Project.

I have lived in the IGS Library off and on since 1938. I thank past and present librarians for their tolerance, help, and friendship. Our federalism project is indebted to Jack Leister, former head librarian, Terry Dean, current head librarian, Kathleen Burgess, Ron Heckart, Marc Levin, Diana Neves, and Susi Schneider. Since I have never been allowed to browse in the stacks, I salute the many pages who over the years have retrieved books for me.

Equally important has been IGS' support of the annual seminars on federalism under Harry N. Scheiber of the Boalt Hall School of Law. IGS Associate Director Bruce Cain and Assistant Director Adrienne Jamieson continue to be delightful and supportive colleagues.

The three project reports are being published by IGS Press and marketed in Canada by the Institute of International Relations of Queen's

University (Douglas Brown, Director) and in the United States and elsewhere by IGS. We are deeply indebted to the IGS Director of Publications, Jerry Lubenow, and his associates, Maria Wolf (Publications Editor), Pat Ramirez (Publications Coordinator), and Catherine West (Publications Marketing Coordinator). I personally accept responsibility for all my procrastination, which makes Maria Wolf's continued good nature both extraordinary and appreciated.

The IGS Press has also assumed from the University of California Press the publication of the Franklin K. Lane series of books on major metropolitan regions. Three of the nine published volumes are on Canadian metropolitan regions: Albert Rose (University of Toronto) on Toronto, Andrew Sancton (Western Ontario) on Montreal, and Meyer Brownstone (University of Toronto) and T. J. Plunkett (Queen's) on Winnipeg. IGS Press will also publish this year a volume on the extended Toronto region by Frances Frisken (York University)—the author of an essay in volume one of this series.

We are especially indebted to several people at Queen's University: Ronald Watts, Douglas Brown, Richard Simeon (now at the University of Toronto), Peter Leslie, C. E. S. (Ned) Franks, and T. J. Plunkett. Similar assistance, encouragement and criticism has come from Peter Oberlander and Alan Cairns at the University of British Columbia and from Patrick Smith of Simon Fraser University.

The Canadian government has also been closely involved in developing the idea of a joint venture and in furnishing financial assistance to support the research of several participants. The encouragement and assistance of the following are especially appreciated: Alan Unger, Public Affairs Officer, Consul Stuart Hughes, and Andrew Thompson, Academic Affairs Officer, at the Canadian Consulate-General in San Francisco. From the beginning of our efforts to go forward with Canadian-American collaboration Norman London, Academic Relations officer at the Canadian Embassy in Washington, D.C., has constantly shown the deepest interest in our work. We are grateful to him and to the Canadian government for a close professional friendship.

The Honorable James D. Horsman, Deputy Premier of Alberta and Minister of Federalism and Intergovernmental Affairs has taken time frequently to visit with the Canadian Studies Program and to discuss events leading to and following from Meech Lake and the national and Quebec referenda of 1992.

We would also like to acknowledge the advice, stimulation, and criticism at various times and in various ways from Stanley Scott

(Berkeley); Martin Landau (Berkeley); Randy Hamilton (Berkeley and Golden Gate University); Don Chisholm (UCLA); James Desveaux (Texas A&M); Evert Lindquist (Toronto); Peter Lyden (visiting scholar at IGS); John Sproul, Roger Thompson and David McLean of the Advisory Group to our Canadian Studies Program; Malcolm Taylor (York); David Elton (University of Lethbridge and Canada West Foundation); Alan Artibise and David Elkins (University of British Columbia); Lloyd Brown-John (University of Windsor); Charles Doran (Johns Hopkins-SAIS); Daniel Elazar (Bar Ilan University and Temple University); Stephen Schecter (Russell Sage College); David Walker (University of Connecticut); Lyle C. Fitch (Institute of Public Administration); Carl Stenberg (University of Virginia); Bruce McDowall (U.S. Advisory Commission on Intergovernmental Relations); and Kent Mathewson, a leader in the reconstruction of intergovernmental relations in metropolitan regions.

This magnificent experience for all participants and the publication of some of our findings and conclusions have been possible only because the William H. Donner Foundation decided to fund our efforts. We salute William T. Alpert for his trust backed by the generosity of the foundation. Other people and institutions have contributed equally generously with grants to match the foundation's support. Robert H. Gayner, executive director of the Business Fund for Canadian Studies in the U.S., made it possible to complete the project. The Pacific Gas Transmission Company, The McLean Group of Vancouver, the Canadian Embassy, the Province of Alberta, and Marathon U.S. Realtors, Inc. were equally generous throughout the life of the project.

Victor Jones  
*Canadian-American Federalism Project*  
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# *States and Provinces in the International Economy Project*

Douglas M. Brown  
Earl H. Fry  
James Groen

During the last decade, a growing body of literature has emerged chronicling the international activities of noncentral governments in both federal and other political systems. This literature has helped to replace the perception that nation states are the only significant global actors. The developments on which this literature is based have arisen from numerous domestic and international factors. The primary objective of this volume is to weigh the importance of these external and domestic factors in answering the questions: what are the roles played by the states and provinces of North America in the international economy, and why do they arise?

The domestic factors identified as responsible for the rise of international state and provincial activity include the bureaucratic growth of regional governments and the widespread perception of federal inefficacy in trade and investment promotion. In the past decade it seems that external or ecumenical forces have eclipsed the domestic impetus to noncentral government activity abroad. Chief among these external causes has been the globalization of the domestic economy in North America. Marshall McLuhan's global village has reached the shop floor as advances in telecommunications, and improvements in transportation have made it cost efficient for firms to divide up production processes and distribute them across the globe.

Though referred to with a frequency that may soon consign it to the lexicographical graveyard, the implications of "globalization" for North American subunits have seldom been outlined. The dramatic increase in global production and competition stemming from the economic

ascendence first of Japan, then the newly industrialized Asian countries, followed by the integration of the European market, has meant that the economies of the states and provinces have lost their competitive edge in the manufacture of standard-technology mass-produced goods.<sup>1</sup> One effect of this "integration of markets on a global scale" has been a political response—demonstrated in the Canada-U.S. and proposed Mexico free trade agreements—predicated upon reducing North American reliance upon trade barriers as a means of protecting domestic markets.<sup>2</sup> These national decisions may in turn require North American constituent governments to eliminate internal structural impediments to greater external competition.

The implications of complex interdependence at the regional level are straightforward; success in North America in the 1990s will occur less by virtue of low-cost raw materials, protectionism, or preferential market access than by dint of increasingly stiff competition for foreign investment and markets. As the creation of large-scale "turn-key" projects in North America by Japan or Europe become increasingly scarce, international trade and investment policy will become as never before central issues for officials at the state and provincial level, who will find it necessary to apply political, bureaucratic, and financial resources as catalysts for economic change.

## OVERVIEW OF THE CHAPTERS

As the outcome of a collaborative research effort among scholars in Canada and the United States, this volume communicates the results of a conference held at the University of California, Berkeley, November 9-10, 1990. The research effort as a whole has focused on the role of North American state and provincial governments in the international economy, but it complements recent work on the involvement of "subnational" governments around the world in the broad range of international activities.<sup>3</sup> The objectives of the conference were two-fold: to assess the response of constituent governments in North America to global economic challenges; and to assess the implications for intergovernmental relations within and between Canada and the United States.

The papers provide a mixture of disciplinary approaches and cover a range of issues. Five themes emerged, forming the basis for complementary chapters. The themes include the relationship between state-provincial paradiplomacy and (1) the international economic context, (2) trade policy and law, (3) direct state-provincial economic relations, (4)

increasing competition in trade and investment promotion, and (5) relations with the federal government on foreign policy matters.

In keeping with the first theme, Earl H. Fry of Brigham Young University provides an overview of the global economic challenges that are leading the states and provinces to undertake greater involvement in international relations. Fry views this "grassroots" activism as fundamental to future North American competitiveness, though he expresses concern that subnational officials have yet to consider the implications of their actions for the larger federal unit. Panayotis Soldatos of the University of Montreal develops an analytical framework that views state and provincial activity as a symptom of crises leading to decentralization, but also as an opportunity to institute a useful rationalization process, ideally resulting in paradiplomatic action that is cooperative or parallel to federal foreign policy. Though he views subnational involvement to be primarily a product of situational characteristics that differentiate the needs of a particular territorial unit from its peers, he uses a case study covering the past 25 years of Quebec's paradiplomacy as evidence of a process of "disideologization-normalization." Soldatos builds on this evolution toward rational provincial activity with his own strategic framework for paradiplomatic activity.

In the second section addressing trade policy and law, Harry N. Scheiber of the University of California, Berkeley, assesses U.S. state paradiplomatic activity against what in his view is the states' more substantial role in economic policy matters, including trade. Scheiber assesses direct state international activity in terms of historical and contemporary significance and, in somewhat of an antidote to other chapters in this volume, he judges that they are insignificant when compared to the broader economic role of the states in taxation, antitrust, environmental, resource management, and other policy fields. He warns that there are, moreover, no enduring constitutional underpinnings for U.S. state policy intervention affecting foreign economic policy of the nation as a whole. The political support—or rather tolerance—of state paradiplomatic international activities could mask, in his view, the greater danger of a U.S. federal government intent on imposing uniformity on broader state policies in the name of competitiveness.

The impact of policy is also the focus of the chapter by Douglas M. Brown of Queen's University's Institute of Intergovernmental Relations, which assesses the role that provinces have played in Canada-United States relations through trade negotiations and the resolution of trade disputes. Traditionally, trade relations have pitted Canadian regions



against each other, and access to the negotiation process has therefore been increasingly viewed as imperative by provincial actors. Relatively minor involvement in the Tokyo Round whetted a provincial desire for the greater involvement, which they achieved in the 1985-1987 Canada-United States bilateral trade negotiations. The result was the Canadian process of "executive federalism" applied in a constructive and concerted way to the bilateral trade negotiations. However, the process with few exceptions permitted federal actors to remain in the driver's seat at the critical stages of negotiation. Although Brown identifies remarkable improvements in the consultative structures over the past two decades, the process has been generally devoid of an entrenched deliberative structure, making it neither a genuinely collaborative or centralized response to trade policy challenges.

In the third section, which addresses direct state-provincial economic relations, Martin Lubin of the State University of New York and James McNiven of Dalhousie University focus upon, in the former case, the New England Governors/Eastern Canadian Premiers (NEG/ECP) Conferences, and in the latter, the role of Canadian provincial offices in the United States. Noting that the "real work" of the cross-border relationship is accomplished by committee structures, Lubin traces the development of two economic bodies: the Northeastern International Committee on Energy (NICE), which has undertaken numerous projects aimed at resolving cross-border energy problems, and the Tri-Regional Economic Cooperation Committee (TREC), whose mandate is to increase commercial exchanges. In contrast to Gerard Rutan's conclusions regarding cross-border relations on the Pacific Coast, Lubin finds the eastern provinces more eager than the states to contemplate ventures requiring financial commitment.<sup>4</sup> Despite the creation of committees on the environment and sustainable economic development, energy policy "has constituted the durable cement" of the relationship, largely because the perceived reciprocal benefits on energy prevail over other more conflictual, cross-border issues. Lubin concludes that the regional paradiplomacy between the two represent a microcosm of the asymmetry that exists at the national level.

James McNiven and Dianna Cann provide a review of the 21 provincial trade offices in the United States, an outgrowth of his earlier research into U.S. state economic development policies. In assessing the reasons for increasing provincial interest in trade and investment, McNiven and Cann stress that the awareness that other subnational units such as German *Länder* and U.S. states were "raising the ante" is of more

significance than internal competition among Canadian provinces. A second factor has been the perceived federal "failure" in trade and investment promotion. For example, the provinces have been critical of the concentration of federal efforts in Europe as compared with the Asia-Pacific region. There is, moreover, a suspicion in the provinces outside central Canada that Ontario and Quebec were "fed the best information."

In the fourth section on trade and investment promotion and competition, Peter Morici from the University of Maine and Kevin Archer from the Margaret Chase Smith Center interpret data provided by the National Association of State Development Agencies and conclude that state governments are now at the forefront in promoting the international competitiveness of U.S. firms. Given the declining support of the Reagan administration, this development is primarily the result of "fend-for-yourself federalism" and increasing global competition for traditional U.S. industries. Morici and Archer predict that state promotional activities will raise issues of equity among states as Washington's "hands-off" policy allows wealthy states to take the lead in the U.S. struggle for economic competitiveness.

In the final section on the broader issue of federalism and foreign policy, John Kline notes that it is not the balance of constitutional authority that has changed but rather the content of foreign policy. Kline traces expanding state activities from their origins, identifying an "unmistakable" trend toward greater state involvement and influence. He states that the existing legally defined intergovernmental structures apply less successfully to this area. Federal-state cooperation is highly evident in the investment field, as indicated by the increasing number of joint programs, even though state programs often exceed national policy guidelines and compromise national foreign policy goals being pursued by U.S. negotiators at the GATT (General Agreement on Tariffs and Trade) and other multilateral fora. Direct policy input has been facilitated by several structures such as the Intergovernmental Policy Advisory Committee on Trade.

Finally, Kim Nossal of McMaster University seeks to determine the degree to which the external activities of Canada's noncentral governments have had an impact on Canadian foreign policy. In somewhat of a counterweight to other analysis in this volume (although reinforcing some points in the chapter by Harry Scheiber), Nossal insists that the answer hinges upon the degree of definitional rigour used in interpreting the term "foreign policy." If the broadest methods of interpretation are used, thereby elevating the foreign behaviour of very different actors to

an "analytically equivalent level," then it is obvious that provinces are important foreign actors. However, Nossal is unsure of the utility of labeling the goals and decisions of a small segment of the political community as "foreign policies," and points out that noncentral governments are very inconsistent and play an inconsequential role in many issues. Nossal concludes that the conditions under which noncentral governments are likely and unlikely to assert themselves in the international sphere need to be identified.

Apart from these detailed examinations of the theme, certain common threads emerge in this volume as a whole. There are converging and diverging analyses of the role of states and provinces in the international economy. The remainder of this introduction examines five subthemes. The first is a comparison of the differing impacts international trade has on the constituent units of Canada and the United States. Second, we examine the changing concepts of sovereignty in the face of the twin and contradictory trends of integration and decentralization. Third, we consider the international role of states and provinces as a new or old phenomenon. Fourth, we draw comparisons illustrated by this volume between the two federal systems. And fifth, we examine the direct impact of state and provincial international economic activity on Canada-United States relations.

### COMPARING THE IMPACT OF TRADE

The chapters in this volume indicate an increasing dependence upon foreign trade during the past decade, with Archer and Morici noting that U.S. exports increased 50 percent between 1986-1990 as a proportion of GNP, though this may be misleading as interdependence is not perfectly measured by the volume of trade. Within the North American dyad, it is helpful to refer to the sensitivity to developments within the other region. Those with the greatest vulnerability to a reduction in the level of economic transactions in the North American system are subunits, those states or provinces that have specialized needs not always shared by the nation as a whole.<sup>5</sup>

Measured by virtually any index, the U.S. stake in the global realm, though shrinking, dwarfs that of Canada. For example, in terms of direct investment abroad, the 31.5 percent of world investment stock owned by U.S. actors contrasts with Canada's 4.5 percent.<sup>6</sup> Yet, the Canadian economy is heavily influenced by external economic relations and remains one of the most trade-dependent of the OECD nations, reliant

upon exports for almost 30 percent of its gross domestic product, compared to only 10 percent for the U.S. Output levels in many sectors of the Canadian economy far exceed the requirements of the relatively small Canadian market, making it highly dependent upon foreign markets as an outlet for its goods and services. In contrast, with a population base of one-quarter billion and 23 percent of the world's GNP, the U.S. is the most "self-contained" of the industrialized nations. These contradictory positions can be historically identified in the dissimilar responses to economic declines; in periods of economic distress, Canadians have tended to seek salvation through international trading relations, while the U.S. could not expect to make major repairs to its economy through a single bilateral treaty.

Second, in contrast to the manufacturing strength of the U.S., Canada's history as a hinterland, resource-producing economy and its heavy dependence upon trade with one country have given it an economic profile analogous to some of the developing countries. In trade terms, Canada is a rich but highly dependent country. Together, Canada and Mexico are the only two countries that increased their trade dependence upon one country (the United States) over a recent four-year period.<sup>7</sup>

Despite the benefits for both, the asymmetrical relationship between Canada and the U.S. provides U.S. states—even if arguably weaker in constitutional terms than Canadian provinces—with a source of power over their more highly dependent provincial counterparts. As Fry points out in his chapter, California has a higher GDP than all of Canada. Few provinces in Canada can match the economic clout of the largest U.S. states, although Ontario's GDP is larger than Sweden's, and Ontario is the U.S.'s second largest international trading partner.

### **CHANGING CONCEPTS OF SOVEREIGNTY: THE EFFECTS OF INTEGRATION AND DECENTRALIZATION**

One of the great ironies of noncentral government activity abroad concerns the issue of sovereignty in an increasingly interdependent world. In theory, the integrative forces produced by the globalization of the world economy should be at odds with parochial domestic issues. This tension was identified in a different way in 1937 by Franklin Roosevelt who stated, "We have always known that heedless self-interest was bad morals; we now know that it was bad economics." Yet paradoxically—as will be demonstrated in all of the chapters in this volume—regionalism is also being globalized and is contributing to the explosion of "subgroup-

ism." James Rosenau has identified this blend of greater world integration synonymous with increased worldwide "provincialization" to be a hallmark of the latter quarter of this century.<sup>8</sup>

There seems to be no contradiction between political integration and the reinforcement of regional identities internationally. Many in Quebec are gambling on North American economic integration as a means of achieving the recognition of its identity and reducing Quebec's dependence upon the rest of Canada. The continentalist development strategy, highlighted by the 1965 Auto Pact and 1988 Free Trade Agreement, has maintained Canadian reliance on American trade and capital and ensures that a substantial portion of Canadian industry is American-controlled. These intense asymmetrical links render Canada's economy, if not wholly integrated, then at least highly sensitive to developments south of the border and make certain that Canadian economic policy is almost by definition also Canadian foreign policy toward the U.S.

The broader political implications of integration and interdependence have been posited for decades. Both Wolfram Hanreider and Rosenau described in detail the process and implications of global interdependence in the mid-1970s.<sup>9</sup> Kal Holsti has critically referred to the "necrologists of international relations" who as early as the 1950s had identified the proliferation of new international mini-actors, which they incorrectly predicted would spell death for nation-states.<sup>10</sup> The nation-state has not, as Daniel Latouche predicted, "faded into the sunset of transnational relations." Rather, as Nossal's chapter in this volume on the provincial contribution to Canadian foreign policy demonstrates, it remains the focal point for the articulation of regional foreign policy concerns.<sup>11</sup>

North America's version of the "integration question" includes both the degree of centralization of authority in federal institutions and the intensity of economic and cultural links between the two nations. For Canadians, the extent to which Canada's capacity for autonomous decision making is affected by these links is a primary consideration. When considering the role of noncentral governmental actors, these two developments, the one internal and the other external, become linked. In Canada, the provincial governments have advanced development policies on the grounds that they would promote genuine Canadian integration by redressing regional injustices, though the consequent enhancement of the provinces' position has led to a certain fragmentation of the Canadian political community.<sup>12</sup> Such regional conflict has also occurred in the U.S. and has led to what some claim to be a diminished public commitment to overarching national values. For example, state disenchantment

with Washington's handling of energy issues has since the 1970s helped propel a number of states to seek alliances with energy-rich provinces. Cross-border regionalism in North America has been predicated upon the search for new alliances as regions try to strengthen themselves and find counterweights to central governments.

The incongruous result is that the continentalist options that have limited appeal at the national level frequently enjoy considerable allure at the regional level. In 1973, Roger F. Swanson found 766 state-province interactions, a number that has most likely increased since.<sup>13</sup> These opportunities for regional alliances signal greater strains for national integration but will induce higher degrees of north-south integration. In Canada, this development is likely to be tempered only marginally by contrary nationalist currents given that a strongly "nationalist" perspective no longer resides with either the Liberal opposition or the ruling Conservative government in Ottawa.

Precisely how influential provincial cross-border activity will be in determining the degree of north-south integration is difficult to gauge. Canadian federal government policy itself has oscillated between integrative initiatives and programmes designed to enhance autonomy, often in relation to corresponding periods of economic growth and decline in the performance of the American economy.<sup>14</sup> The North American states and provinces will likely follow similar patterns; during periods of decline in the performance of the American economy, these noncentral governments will shift their foreign policy strategies toward the pursuit of non-North American trade options, and during periods of stability, economic integration will likely accelerate (with the possible exception of the "Pacific Rim" oriented states and provinces).

This cross-border integration will likely be accompanied by a corresponding decentralization within each federal system. As the balance of power in federal subunit relations shifts increasingly in favour of subunits, and as state-province policies are redefined to project economic and domestic interests abroad, the decentralizing influence of globalization on federalism will become increasingly apparent. The decision by both federal governments to pursue a policy of decentralization may benefit those noncentral governments capable of expressing themselves internationally. It may also, following Scheiber's analysis, be a conscious policy of the federal order of government to foster competitiveness among the federation's constituent units. However, in the long run, these developments may also pose complications for states and provinces if carried beyond a certain extent, as cities and municipalities follow suit.

In his chapter in this volume, Soldatos refers to the danger of a "decoupling process" connected to uneven development in which economically lagging hinterland regions harbour resentment against affluent international city sophisticates. Or to put the issue as Canadian economist Tom Courchene would, if international cities are the key to participation in the global economy, what happens to the ultimate sovereignty of those states and provinces that do not have such a city within their territory?<sup>15</sup>

As they grapple with the exigencies presented by an interdependent global economy, provincial and state leaders face mounting financial pressure to attract the foreign investment and trade required to sustain living standards and ensure electoral solvency. The states and provinces have evolved into elaborate "social service systems."<sup>16</sup> Yet in both the U.S. and Canada, federal transfer payments to the states and provinces have followed different cyclical patterns, steadily increasing in the U.S. between the 1960-1980 period from 18 percent to 32 percent of total state revenues, while declining from 30 percent to 21.7 percent in Canada during the same period. This may explain in part why the significant increases in provincial trade and investment promotion that occurred in the early 1970s (see below) predated what has been a more recent phenomenon in the U.S.

The Reagan administration's fend-for-yourself federalism was accompanied by reductions in federal grants-in-aid from 25 percent of total noncentral government revenues in the late 1970s to 17 percent in 1990. Transfers to states and municipalities were reduced in real terms by more than 40 percent over the past dozen years,<sup>17</sup> reductions that state officials have been forced to recoup elsewhere.<sup>18</sup> In their chapter, Archer and Morici note that the Bush administration has maintained the pace of decentralization, viewing regional allocation of public disbursements and trade and investment activity as being carried out most efficiently by state and local governments, as well as pursuing federal budget restraint begun in the Reagan administration.

In Canada, federal transfers to the provinces dropped to 18.8 percent in 1990, and federal transfers to the "have" provinces of Ontario, Alberta, and British Columbia especially have been curtailed, placing a greater onus on these provincial governments to generate economic stability through regional programmes. A recent example was the government of Ontario's decision, in the face of severe economic recession, to increase its annual deficit to Cdn \$10 billion in 1991, with Cdn \$4.3 billion earmarked for infrastructure projects for the creation of 70,000 jobs.

## **STATES AND PROVINCES AS INTERNATIONAL ACTORS: NEW OR OLD PHENOMENON?**

As Scheiber's chapter points out, U.S. state intervention in international economic matters has long historical antecedents. However, U.S. states as direct international actors are a rather new phenomenon, for prior to the globally induced economic developments discussed in Soldatos' chapter, the sheer size and domestic opportunities within the U.S. precluded the need for elaborate international strategies. In the 1960s, only three states had opened foreign offices. This number increased to over 25 in the 1970s. Today, 43 of the states have opened over 160 offices abroad to promote trade, investment, and tourism, almost three times the level of the early 1980s.<sup>19</sup> In contrast to the dozens of personnel each provincial ministry may employ, state home bureaucracies are modest, and with the major exception of California's 15-person World Trade Commission, they often operate from the governor's office. The National Association of State Development Agencies estimates that total state expenditures on foreign offices are about U.S. \$100 million per annum. By comparison, expenditures by Quebec's Ministère des Affaires Internationales for representation abroad were Cdn \$38.5 million in 1990, while Ontario's Ministry of Industry, Trade, and Technology and Ministry of Intergovernmental Affairs together spent over Cdn \$20 million on its foreign offices. However, as Fry's chapter demonstrates, state activity is expanding rapidly, and expenditures for overseas promotion quadrupled during the latter part of the 1970s. Moreover, 48 states significantly increased their international budgets during the 1980s so that today virtually all states participate in foreign trade fairs and seminars. Attempts by U.S. states to employ protectionist measures also became widespread during the 1980s with 32 states introducing "buy American" laws.

The Canadian provinces have a longer history of direct international activity. British Columbia, for example, has been represented in London for more than 115 years. An initial expansion phase of provincial representation occurred during the late 1960s and late '70s with the number of offices abroad increasing from six in 1960 to 35 by 1977. Provincial expenditures on trade and investment promotion in real 1978 dollars increased from Cdn \$63.3 million in 1983 to Cdn \$116 million in 1988, while federal expenditures dropped from \$105 million to Cdn \$74.8 million.<sup>20</sup> U.S. states are as yet far less sophisticated in appreciating the association between politics and economics than the provinces and limit



themselves to trade promotion and reverse investment. Whereas some provincial offices appear to be mini-embassies, most state offices are modest, two-person affairs employing local personnel.

As McNiven and Cann's chapter on Canadian offices in the U.S. reveals, province-state relations are most significant because they represent the vast majority of continental-based international activity and are more longstanding. Lubin's chapter traces the annual meetings between the 11 New England governors and Eastern Canadian premiers since 1973 from which a broad range of institutional agreements have been established. Though not examined in this volume, in western North America, a similar development has occurred with the provinces of British Columbia and Alberta joining in 1989 the Western Legislative Conference, which includes 13 western states plus American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Despite the fact that the provinces have no express constitutional authority to enter into international agreements, and the states also operate under clear constitutional limitations (see the chapters by Brown and Scheiber), the practice of cross-border state-provincial agreements is well established. Richard Leach identified 47 transborder agreements in 1970, and today there exist some 800 agreements and letters of understanding linking the provinces and states.<sup>21</sup> While similar activity takes place elsewhere, the degree of intensity is unmatched.<sup>22</sup> Because of the close interrelationship between the component governments, the North American context provides a unique component for study.

## **DIFFERENCES BETWEEN THE TWO FEDERAL SYSTEMS**

Key variations exist between the two federal systems of government that help explain their varying approaches to international activity. The fear of federal encroachment on provincial jurisdiction is stronger than in the case of states because of their greater degree of jurisdictional autonomy and their dominant ownership of natural resources. Furthermore, state and local interests have generally found a more effective outlet in Washington than territorial particularisms in Ottawa.<sup>23</sup> Traditionally, the effectiveness of "intrastate federalism" (i.e., representation at the centre) in the U.S. has facilitated the centralization of federal foreign policy and checked the growth of state activity. John Kincaid notes that while international relations grew in importance, they were rarely a priority for governors, partially because they lacked the authority to engage in foreign relations that their provincial counterparts enjoy.<sup>24</sup>

In Canada, the reverse development has occurred, and consequently foreign affairs has evolved along more decentralized lines. One manifestation of Canada's binary decision-making process examined in Brown's chapter is the drafting of the 1988 Canada-U.S. bilateral trade agreement, in which the provinces insisted and were largely successful in being consulted during the nearly two years of trade negotiations through almost 140 meetings between federal and provincial representatives (including 10 meetings between the prime minister and the 10 premiers), in order to ensure provincial input and implementation of the terms of the treaty.<sup>25</sup> Washington's preferred route was an intense consultative process between federal negotiators and congressional committees. In contrast to the Canadian Parliament America's federal government has the unambiguous authority to enter unilaterally into international treaties and the authority to enforce treaty terms on the states (although the ability to exercise the political will necessary to do so is another matter entirely).

The level of provincial and state international activity is largely the result of the federal structure employed in both nations—the division of the legislative functions between the central government and the governments of the constituent units of the federation, and the relative separation of powers among the branches of government in the two federal systems. To varying degrees, in both the states and provinces, constitutional ambiguity and government practice have led to an expansion of constituent unit competence beyond that which is prescribed in either constitution. The federal character of Canada has shaped Canada's foreign policy in a number of areas.<sup>26</sup> The Canadian provinces have powers granted to them by the Constitution Act, 1867, and by judicial interpretation of that act, which encourage them to act internationally. The 1937 Labour Conventions case effectively ruled out unilateral federal implementation of treaties dealing with matters of provincial competence. Even more important are provincial powers in the economic-commercial realm, including control over natural resources and jurisdiction over intraprovincial trade and commerce.

The American federal system is comparatively more centralized than the Canadian and legally the states are more limited internationally. For example, there is no Canadian equivalent to the U.S. Supreme Court's judgment in *Missouri v. Holland* (1920), which upheld the constitutionality of a congressional statute for protection of migratory birds. The U.S. national government has a determinant role in both commerce between states and with foreign nations, with Article 1 (10) of the Constitution of 1787 specifically denying states the right to engage in

international agreements with foreign nations, and judicial interpretation of the federal "commerce" power has, in general, upheld federal supremacy. Nevertheless, trade matters have been jealously guarded by Congress and a review of the work of the National Governors' Association, and state activity in general, reveals that increasing global interdependence has propelled states to assume considerable discretionary authority in matters concerning exports, import restrictions, and investment incentives, with these actions meeting only periodic opposition from the respective federal levels of government.<sup>27</sup>

In their chapter on the evolution of state international policies, Archer and Morici note that state governments are now at the forefront in promoting the competitiveness of U.S. firms. John Kline notes in his chapter that the U.S. federal government's decision to shift the responsibility for economic development to the state legitimizes this activity. He predicts that state governments can be expected to maximize their powers over land use, banking and insurance, environmental controls, corporate taxing, and "offshore" industries, all of which will increasingly impact foreign investors and firms.

### THE IMPACT ON CANADA-U.S. RELATIONS

While a category of "domestic factors" is often included when compiling domestic determinants of foreign policy, rarely is the question asked, "what is the impact on Canada-U.S. relations of the evolving role of states and provinces in the international arena?" A number of issues warrant consideration. During the previous decade, major conflicts in bilateral relations have centered on significant interventionist efforts by the U.S. and Canadian governments. As decentralization accelerates, these functions are being carried out by noncentral governments through export subsidies, procurement restrictions, and preferential treatment that have continued across a range of exports. Many of these functions are beyond the direct purview of the Canada-United States Free Trade Agreement and the General Agreement on Tariffs and Trade (GATT). Compounding matters has been the difficulty of the Uruguay Round of the GATT in reaching compromises in a variety of sectors. As a result, noncentral governments can hardly be expected to dismantle various domestic support measures, therein providing a potentially fertile environment for future trade disputes between the two North American nations and most certainly continued complications in international trade negotiations.

Taken individually, these actions may not have a profound impact on North America's prosperity, but their cumulative impact could be considerable. The U.S. style of government is uniquely susceptible to special interest pressures, and judging from past experience, the Free Trade Agreement (FTA) chapters 18 and 19 dispute resolution panels will likely see heavy use. Between 1980 and 1986, the U.S. International Trade Commission (ITC) examined 281 countervailing duty and 348 antidumping cases, of which 30 were against Canada.<sup>28</sup> One need only review the events surrounding recent bilateral trade disputes to note the preponderant role of regionally based interest groups in the U.S. This includes the Wisconsin-based G. Heileman and Pabst Brewing petitions to the U.S. Trade Representative on unfair provincial liquor board practices on beer and the U.S. Coalition for Fair Lumber Imports' continuing role on softwood lumber. This articulation of regional grievances, often with the tacit support of state or provincial governments on both sides of the border, may prompt an increased number of ongoing trade conflicts.

The decision by states and provinces to establish representation in the opposite nation will also alter the configuration of the U.S.-Canada relationship, changing it from a dyad at least, to a triad.<sup>29</sup> For example, there are almost half as many Quebec delegations as there are Canadian consulates in the United States, and their role can in some respects match that of the federal government's external affairs representatives in the U.S. As was demonstrated during the 1987 softwood lumber dispute, the U.S. government has generally been discerning in its observance of strict orthodoxy in its relations with Canada through its refusal to "cut separate deals" with provinces. Nevertheless, the threat remains for the Canadian federal government; and as the various states and provinces improve their capacity to initiate and receive transsovereign signals, the reality and the study of Canada-U.S. relations will become more complicated.

On a more positive plane, the heightened level of state and provincial involvement joins a wider process of decentralization and deregulation on the continent that may improve the competitiveness of the North American partnership. As the process of decentralization gathers momentum, constituent governments will attempt to consolidate their province-state-building strategies, and concomitant competition aimed at attracting job-creating foreign investment will likely intensify. Politically, bordering regions will continue to become further integrated and establish more active political relations with adjacent regional economies; B.C. and Alberta with the Pacific Coast states and Midwest, Ontario with the

central states, and Quebec and the Atlantic provinces with the Northeast. While possibly leading to further regional balkanization and the undercutting of national coherence on economic development, this development has a positive corollary. Canada and the U.S. need to engage each other directly and formally in order to place cross-border trade on a more secure footing. From a Canadian perspective, the key international economic predicament continues to be American protectionism. Some of the more straightforward disputes, such as the disagreements regarding provincial liquor board practices and U.S. meat inspection procedures, are the types of issues that provinces and states could help to resolve.

At another level, some have suggested that the U.S.-Canada bilateral trade agreement would create a "fortress North America" at the expense of a larger web of trade relationships for both nations. The foreign activities of the states and provinces, which are often focused on Asia as well as Europe, could serve to further broaden international linkages. Regional actors are often best placed to communicate the opportunities for their regions in international developments such as Europe 1992, Hong Kong in 1997, economic liberalization in China, and Eastern Europe's democratization.

### **CONCLUSIONS: THE NATURE AND EFFECT OF GLOBALIZATION**

The influence of global interdependence on subnational units has received some attention, but the direct implications have not been fully outlined. All indicators suggest that interdependence is accelerating the role of states and provinces in the international economy, in essence mirroring a process that occurred earlier at the level of the nation-state. In North America, the states and provinces have become major interveners in the economic domain and have never before been so exposed to the competitive forces of international competition. This competition is so fierce that those constituent governments that choose not to participate may find their economic futures threatened.

By responding to and surviving international pressures, the states and provinces' position and legitimacy in the federal framework are reinforced. Arrangements between states and provinces and foreign actors enhance the overall capacity of their policies to adapt to external disturbances such as energy supply interruptions, economic recession, environmental menace, and other events that respect neither intragovernmental power divisions nor international borders. While the creation of

state or provincial departments or agencies designed to coordinate relations with foreign governments has been predicated on a blend of factors, they have given rise to one collective corollary—to further augment the range of state-provincial influence.

Despite the above conclusion, the division of authority that characterizes federal systems can contribute to an arrangement of counterbalanced policies among the constituent governments that may neutralize their influence.<sup>30</sup> At its extreme, this can lead to what some have called the "lowest common denominator" syndrome, in which federal policy will be a compilation of constituent unit initiatives. Therefore, in both the U.S. and Canada, the federal system does matter. States have considerable control over economic matters through control of corporate taxation, regulation, and infrastructure development, and provinces have the added power over intraprovincial trade, natural resources, and state enterprises.

Framed within these developments, the thrust of state-provincial activity will increasingly be by direct involvement in the international economy, as compared to the more indirect means of attempting to influence the external economic policy of the federal government. In the U.S., a number of philosophical premises—including the overriding desire to reduce the scope of the federal government and a prevailing assumption that the states are best placed both politically and economically to handle resource utilization and the demand for domestic programs—suggest that continued growth in this activity can be expected. Similarly, in Canada the centre of gravity has come to reside with the provinces. These developments will not in themselves imperil the existing federal structures. In the words of Ivo Duchacek, the interaction between integrative themes and diacritical tendencies ensures that "flexible federal systems are positively predisposed to handle the problems of global and regional interdependence more effectively than unitary or authoritarian regimes."<sup>31</sup> However, if the political advantages inherent to federal states are to be realized, more effective internal collaborative structures should be established between the levels of government in both nations.

Because of the novel, diverse, and extensive nature of these activities, John Kincaid has noted that it is "premature and probably unwise to seek some 'rational' co-ordination and regulation of state and local activities in foreign affairs."<sup>32</sup> The activities are too new, too innovative, too diverse, and too dynamic to attempt their capture. While it is perhaps true that the 50 states and over 83,000 local governments in the U.S. make coordination beyond comprehension, Canada's much smaller

number of constituent governments may be able to manage such an effort at a certain level. Future guidelines for behaviour in both nations will likely follow a pattern of flexible accountability that will stress operating in good faith within certain guidelines of conduct rather than a concrete code of conduct. Such an approach would ensure that maximum flexibility is retained to cope with changing economic trends.

International activities of subnational governments can arouse concern among central governments because they may be a vehicle for some form of transsovereign meddling, fragmentation of foreign policy, or may be used as a venue to express reservations regarding the central government's degree of international legitimacy. These conditions are unlikely to occur with respect to the American states. In certain instances, such as Quebec under the Parti Québécois, this activity has been used by the provinces to enhance their own autonomy. However, since the 1980s, all the constituent units have been driven primarily by economic concerns. In the four provinces most active internationally, the operations conducted by their respective intergovernmental affairs departments have, with the exception of Alberta and Quebec, been largely transcended by economic development ministries.<sup>33</sup>

Kincaid has noted that if Canada were to unravel as a nation-state, it would be the result of domestic internal conflict rather than the more symptomatic paradiplomatic activity of the provinces.<sup>34</sup> Internally, federalism adds elements of complication and dialogue to the conduct of foreign affairs, but it cannot be said that federal nations such as Canada or the U.S. have significantly more foreign policy problems than unitary states, or that the problems that do exist are due to constituent government competition any more than to partisan conflict, congressional activism, pressure groups, or electorally mandated changes in government.<sup>35</sup> Any jaundiced view of substate activity must be viewed against the benefits it creates. The export and investment promotion activities of the states help ease the U.S. trade deficit and in the case of the provinces help reduce Canada's three percent current account deficit that is incurred by its Cdn \$250 billion in net international liabilities. Weighed against such considerations, the instances in which substate actors have been obstructionist to federal policies must be taken in stride.

Above all, the phenomena of increased subnational activity on the international economic scene can be expected to dilate the transparent and porous nature of the 49th parallel. The bulk of provincial-state activities are conducted without notoriety, though the very nature of the activity creates opportunities for confrontation with federal governments.

Whether states and provinces will have the adroitness and *savoir-faire* to reach a balance between establishing their identity and maintaining efficacious relations with both the central and foreign governments is another matter.

The benefits for U.S.-Canadian relations include: enhanced representation of regional needs and possibly more equal representation of disparate regions; reduced burdens on the respective central government machinery; and reduced cross-border conflict on small matters as a result of cooperation, matters that could escalate to the point of souring relations if left unattended. The federal structure in both nations can permit in this respect an advantageous devolution of powers. Transborder issues can be handled more expeditiously between the constituent governments by virtue of the fact that their opposite numbers are not implicated in national foreign policy objectives. Against these benefits are the costs such as increased intervention in trade disputes.

### LOOKING AHEAD

Since this volume seeks to identify a developing field of interest, many areas for further research are wide open. Most striking is the need for rigorous quantitative analysis—for example of state-provincial interaction the likes of that conducted by Roger Swanson in 1974.<sup>36</sup> Recently, a number of theoretical frameworks have been developed. Though often divergent in their approach, they share a common need for a larger body of data to which they can be applied. Other still relatively unexplored topics include the role of state governments in U.S. international economic policy, the effect of the FTA and the GATT on state and provincial trade and investment programs, and whether there are significant "beggar-thy-neighbour" aspects to this activity. Similarly, the role of certain players has not been well documented, in particular state legislatures in the U.S. and Canadian provinces other than Quebec, especially Ontario, Alberta, and British Columbia.

This field of study is a rather youthful one—the increasing number and frequency of publications in this area attests to that. Nonetheless, the study has reached the point of maturity that, at the least, will force those who study federalism on the one hand and international relations on the other, to take increasing note of the complex and changing nature of globalization and its impact upon traditional theories and practices of government.



## NOTES

<sup>1</sup>For a good overview see Murray G. Smith, "Muddling Through Is Not Enough: A Survey of Global and Domestic Economic Challenges," in Douglas M. Brown and Murray G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston, Ontario: Institute of Intergovernmental Relations, 1990), 197-238.

<sup>2</sup>See Alan Nymark, "Globalization: Lessons for Canadian Investment Policy and the Federation," in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* 183-96. Nymark states that globalization is an outgrowth of: (1) the expansion in world trade and foreign investment; (2) increased openness of major economies; (3) industrial rationalization worldwide; (4) international networking and other forms of strategic alliances among firms; and (5) the growing importance of European and Asian markets. See Figure 1, p. 191.

<sup>3</sup>See Ivo Duchacek, Daniel Latouche, and Garth Stevenson, eds., *Perforated Sovereignities and International Relations: Trans-Sovereign Contacts of Subnational Governments* (New York: Greenwood Press, 1988); and Hans J. Michelmann and Panayotis Soldatos, eds., *Federalism and International Relations: The Role of the Subnational Units* (Oxford: Clarendon Press, 1990).

<sup>4</sup>See Gerard F. Rutan, "British Columbia-Washington State Governmental Interrelations: Some Findings upon the Failure of Structure," *The American Review of Canadian Studies*, vol. 15, no.1 (Spring 1985): 97-110.

<sup>5</sup>See Richard N. Cooper, "Economic Interdependence and Foreign Policies in the Seventies," *World Politics*, vol. 24, no. 2 (1972): 159-81.

<sup>6</sup>Alan Nymark, "Globalization: Lessons for Investment Policy and the Federation," Figure 4, p. 193.

<sup>7</sup>For a comparative illustration of Canada and Mexico, among other countries, and their trade dependence upon the U.S., see John W. Warnock, *Free Trade and the New Right Agenda* (Vancouver: New Star, 1988), Table 8, p. 87.

<sup>8</sup>James N. Rosenau, "A Pre-theory Revisited: World Politics in an Era of Cascading Interdependence," *International Studies Quarterly*, vol. 28 (1984): 245-305.

<sup>9</sup>See, for example, Wolfram F. Hanreider, "Dissolving International Politics: Reflections on the Nation State," *American Political Science Review*, vol. 72, no. 2 (December 1978): 1276-87.

<sup>10</sup>Kal J. Holsti, "The Necrologists of International Relations," *Canadian Journal of Political Science*, vol. 18, no. 4 (December 1985): 675-91.

<sup>11</sup>See also Daniel Latouche, "State Building and Foreign Policy at the Subnational Level," in Duchacek et al., *Perforated Sovereignities and International Relations*, 29-42.

<sup>12</sup>See Jane Jenson, "Economic Factors In Canadian Political Integration," in Jon H. Pammett and Brian W. Tomlin, *The Integration Question: Political Economy and Public Policy In Canada and North America* (Don Mills: Addison-Wesley, 1984), 50-71.

<sup>13</sup>Roger F. Swanson, *State Provincial Interaction: A Study of Relations Between U.S. States and Canadian Provinces* (Washington, D.C.: The Canus Research Institute, 1974).

<sup>14</sup>See Harold Von Reikhschaff and Brian Tomlin, "The Politics of Interdependence: Canada-United States Intergovernmental Relations," in *The Integration Question*, 144-62.

<sup>15</sup>T. J. Courchene, *Forever Amber* (Kingston: Institute of Intergovernmental Relations, 1990), (Reflections No. 6), 14-15.

<sup>16</sup>Ivo D. Duchacek, *The Territorial Dimension of Politics Within, Among, and Across Nations* (Boulder, Colorado: Westview Press, 1986), 232-33.

<sup>17</sup>David A. Caputo, "Recent Domestic Policy in the United States: Implications for American and Comparative Federalism," in C. Lloyd Brown-John, ed., *Centralizing and Decentralizing Trends In Federal States* (Lanham, Maryland: University Press of America, 1988), 171-80.

<sup>18</sup>Earl Fry, "Trade And Investment Promotion in The United States," in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* 239-56.

<sup>19</sup>*Ibid.*, 240.

<sup>20</sup>Murray G. Smith, "Muddling Through Is Not Enough," 238.

<sup>21</sup>Richard H. Leach et al., "Province-State Trans-Border Relations: A Preliminary Assessment," *Canadian Public Administration*, vol. 16, no. 3 (Fall 1973): 468-82.

<sup>22</sup>For example, see chapters on Germany and Austria in Soldatos and Michelmann, eds., *Federalism and International Relations: The Role of Subnational Units*.

<sup>23</sup>See Roger Gibbins, *Regionalism: Territorial Politics in Canada and the United States* (Toronto: Butterworths & Co., 1982), 45-79.

<sup>24</sup>John Kincaid, "The American Governors in International Affairs," *Publius*, vol. 14, no. 4 (Fall 1984): 115.

<sup>25</sup>For a more complete review of the intergovernmental negotiations that occurred between 1985-87 on the free trade issue, see Douglas M. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* 93-98.

<sup>26</sup>See Kim Nossal, *The Politics of Canadian Foreign Policy*, 2d ed. (Scarborough: Prentice-Hall, 1989), Ch. 9.

<sup>27</sup>For comprehensive evidence of this see John M. Kline, *State Government Influence in U.S. International Economic Policy* (Lexington, Massachusetts: Lexington Books, 1983).

<sup>28</sup>During the same period there were only six countervailing duty cases in the entire European Economic Community, and Japan initiated only one. See John W. Warnock, *Free Trade and the New Right Agenda* (Vancouver: New Star Books, 1988), 107.

<sup>29</sup>See Louis Balthazar, "Quebec's Triangular Situation in North America: A Prototype," in Duchacek et al., eds., *Perforated Sovereignities and International Relations*, 83-89.

<sup>30</sup>Keith Banting discusses the inherent tension between logical planning and some of the incapacitating jurisdictional necessities inherent to the decision-making process in federal systems. See *The Welfare State and Canadian Federalism* (Montreal: McGill-Queens University Press, 1982), 77-81.

<sup>31</sup>Ivo D. Duchacek, "Perforated Sovereignities: Towards a Typology of New Actors in International Relations," in Michelmann and Soldatos, eds., *Federalism and International Relations*, 4.

<sup>32</sup>John Kincaid, "Constituent Diplomacy in Federal Politics and the Nation-State: Conflict and Co-operation," in Michelmann and Soldatos, eds., *Federalism and International Relations*, 69.

<sup>33</sup>The "lead ministries" on international relations in the four largest provinces are as follows: in Quebec, the Ministère des Affaires Internationales; in Ontario, the Ministry for Industry, Trade and Technology (MITT); in British Columbia, the Ministry of International Business and Immigration (MIBI); and in Alberta, the Departments of Federal and Intergovernmental Affairs and Economic Development and Trade share a relatively "co-equal" status.

<sup>34</sup>John Kincaid, "Constituent Diplomacy in Federal Politics and the Nation-State," 54-75, esp. 55. Others are less sure. The east-west linkage in Canada was formed in contrivance of natural north-south ties, and as Garth Stevenson notes, "an uninhibited pursuit by the more powerful provinces of their own interests in a continental context might severely weaken the federal government's ability to act on behalf of the national interest as defined by itself." Garth Stevenson, "Comments on Chapters 6 and 7," in Duchacek et al., eds., *Perforated Sovereignities and International Relations*, 101.

<sup>35</sup>John Kincaid, "Constituent Diplomacy," 65.

<sup>36</sup>Swanson, *State Provincial Interaction*.

# *States in the International Economy: An American Overview*

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## THE SUBNATIONAL DIMENSION

Those few brave souls who study the international relations of noncentral governments in federated states find themselves in a rare period of academic bliss. The subnational units that they so carefully scrutinize are now flexing their political and economic muscles at home and abroad to an unprecedented degree.

At the extreme, several noncentral governments are demanding or may soon demand autonomy in directing their political and economic relations with the rest of the world. The 15 constituent units of the former Soviet Union have already achieved independence, as have many of the units in what was formerly Yugoslavia. Czechoslovakia may also dissolve into separate Czech and Slovak republics. In North America, many francophones in the province of Quebec now support either outright independence or a relationship with the rest of Canada based on political sovereignty and economic association.

Thus, within the framework of an increasingly interdependent world economy in which one-fifth of global production is now linked to international trade, noncentral governments are progressively reaching beyond national borders to enhance their influence and economic well-being. This is particularly true in federal systems where constitutional authority is divided between national and regional governments.<sup>1</sup>

Yet even in cases of regional integration, the range of international activities available to subnational units may be surprisingly broad. For example, one is struck by the potential ramifications of the European Community's subsidiarity policy that would limit powers at the Commu-

nity level to those that, by common consent of the member-states, cannot be effectively fulfilled by national governments acting independently. Moreover, subsidiarity would require, whenever feasible, that national powers be decentralized and devolved to the level of the regions and local communities.

What are the implications of the mounting activism of noncentral governments in an international system that is undergoing a dramatic transformation, a transformation that apparently includes: (1) a readjustment of national priorities away from Cold War politics; (2) the solidification of global interdependence in the economic, resource, and environmental domains; (3) the rising ascendancy of economic issues on foreign policy agendas; and (4) the absence of a hegemonic power to give guidance and direction to the international economy? The final three features are especially pertinent for subnational actors and should enhance their influence in the decades ahead.

Undoubtedly, noncentral government involvement at the international level will prove to be a mixed blessing. In the United States, noncentral government activism will help people at the local level adjust both to the advantages and disadvantages of living in an increasingly interdependent global economy. Subnational units that vigorously promote international trade, investment, and tourism, and that sponsor a restructuring of their educational systems to help young people adapt to globalization, will be making positive contributions in the rapidly evolving international system. This achievement is vital for a nation that has been insular and parochial for much of its history and whose people even today have comparatively little awareness of the world outside the United States.<sup>2</sup>

On the other hand, governments and businesses in the 1990s and early part of the 21st century will also struggle with a major conundrum. At the very same time that the world will be experiencing growing economic, resource, and environmental interdependence, it will continue to be fragmented politically into more than 180 nation-states, many of which will regard the safeguarding of national mercantile interests as their top priority. The further division of these nation-states into scores of activist federated or subnational regional units will intensify political fragmentation.

Moreover, it is important to keep in mind that in the economic sphere, businesses and labor are mobile, whereas in the political sphere, both national and noncentral government boundaries are generally fixed and thus immovable. The United States created 19 million net new jobs during the 1980s, but much of the economic growth was bicoastal, and

11 of the 50 states actually lost population during most or all of the decade.<sup>3</sup> Until recently, California has experienced unprecedented economic growth, but 20 of its 58 counties continue to suffer double-digit unemployment rates. Far too often, state, county, and city governments view economic development in zero-sum terms; in other words, there will be only one winner with the other subgovernmental players being losers. Such a perspective naturally hinders the development of cooperative ties among the subnational units or even with the national government. For instance, in an effort to maintain existing businesses and jobs within their areas of jurisdiction, almost 40 states have passed the toughest antitakeover measures on record. Pennsylvania's 1990 law forces corporate raiders to surrender short-term profits from takeover attempts, clamps down on the corporate voting rights of raiders, and protects labor contracts when corporate ownership changes hands.<sup>4</sup> Cities and counties are also engaged in their share of protectionist activity, with New York City alone providing at least U.S. \$2 billion in incentives during the 1980s just to entice businesses to maintain their facilities within the city's boundaries.<sup>5</sup> Frankly, these measures that impede or greatly distort national and international economic interactions threaten to accentuate political and economic balkanization at a time when the "global village" requires cooperative linkages that transcend subnational and national boundaries.

The intent of this chapter is to speculate further on both the positive and negative ramifications of the international roles assumed by a growing number of America's noncentral governments. The next few sections will set the stage for these ruminations by examining the scope and nature of the international economic activities of U.S. state and local governments, with some comparisons made with the activities sponsored by the Canadian provinces.

As a scholarly field of endeavor, this study of the international activities of noncentral governments is relatively new and is frequently overlooked by specialists in either international relations or local government. Leading North American texts dealing with federalism and with state, provincial, and local governments generally ignore the growing activities of noncentral governments abroad and the possible implications for central-regional government coordination.<sup>6</sup> The same may be said about texts in international relations that either maintain a state-centric emphasis or give some credence to nonstate actors such as multinational corporations, without pinpointing the role that noncentral governments might play in the international arena.<sup>7</sup> Robert Keohane, Joseph Nye, and

others have certainly moved the field of international relations away from both the exclusively state-centric approach and the notion that domestic politics and international politics are clearly delineated and rarely overlap.<sup>8</sup> Nonetheless, as economic and resource interdependence emerge as dominant trends in the contemporary international system, an interdependence that implies a mutual vulnerability that can surpass the scope of national governments and penetrate deep into the heartlands of every nation, both the literature of federalism and of international relations will have to evolve much further in order to capture the essence of a very complex and changing global society. The authors hope the chapters in this book will shed some much needed light on this increasingly important topic.

### THE ECONOMIC PROWESS OF U.S. STATE AND LOCAL GOVERNMENTS

In the world today, there are over 180 sovereign states and more than 300 federated or noncentral regional states.<sup>9</sup> When county and local governments and special districts are added to the equation, literally hundreds of thousands of noncentral government entities are found in federal states. For example, the United States has 83,000 governments, an increase of 3,000 over the past decade. Among municipal governments, 195 cities had populations exceeding 100,000 in 1990, an increase of 29 since 1980. Whereas two-thirds of all Americans lived in rural areas in 1890, three of every four now live in metropolitan areas, and more than one half are concentrated in 39 major metropolitan areas having at least one million residents. Fully 90 percent of America's population growth during the 1980s occurred in these areas with more than one million inhabitants. Most of these metropolitan areas are now actively involved in international economic and cultural activities.

The capacity of state and local governments to influence domestic and international commerce positively or negatively should not be underestimated. Among the 25 leading nations in the world ranked by gross national product (GNP), one could insert 10 states; among the top 50 nations, 33 states; and among the top 75 nations, all 50 states. California, with its 30 million people, entered the 1990s with a \$717 billion annual gross state product and ranked as the eighth largest country globally. New York is not far behind with its top 10 ranking, and Texas produces more than twice as much as neighboring Mexico. These states are also important trading clients for many countries, with California

ranking as Japan's second leading partner after the rest of the United States.

Furthermore, the annual budgets of states such as California and New York, which now exceed \$50 billion (including federal transfer payments), are surpassed by only a handful of national governments around the world. To put this in perspective, California's budget is four times greater than that of the Philippines, a nation with 56 million people. At the municipal level, New York City's annual budget is bigger than all but two states and twice as large as that of the Philippines, and its long-term debt burden is greater than any other borrower in the United States except the U.S. government. The five-county greater Los Angeles metropolitan area, with an annual production of goods and services exceeding U.S. \$300 billion, ranks as the twelfth largest economic power in the world ahead of India, Australia, and Sweden. Total state and local government revenues in 1990 were U.S. \$801 billion, with these noncentral governments spending \$626 billion for the purchase of goods and services, compared with \$424 billion spent by the U.S. government for similar purchases.<sup>10</sup>

### **GROWTH AND IMPETUS FOR NONCENTRAL GOVERNMENTAL ACTIVITIES IN THE INTERNATIONAL ARENA**

State and local governments have rapidly expanded their activities in the international economic system. Only four of the 50 states had opened an office overseas in 1970; 20 years later, 43 states were operating 163 offices abroad, four-fifths of which were located either in East Asia or Western Europe.<sup>11</sup> Annually, 40 governors now lead at least one international mission in search of trade, investment, and tourism opportunities, and states spent U.S. \$92 million on international economic programs in 1990, excluding investment incentive programs.<sup>12</sup> Many mayors of big cities also head international missions, and leaders of smaller cities can participate in the periodic missions sponsored by two umbrella organizations, the National League of Cities and the U.S. Conference of Mayors. Almost 1,000 U.S. communities have also teamed up with 1,850 municipalities in 96 countries through the Sister City program.<sup>13</sup> Increasingly, these Sister City alliances are used to strengthen economic linkages between the twinned municipalities.<sup>14</sup> Cities generally rely on their state offices, U.S. embassies, and the 122 overseas' offices of the U.S. Foreign and Commercial Service to represent



their economic interests abroad, but Tucson, Arizona, has operated its own trade office in Taipei since 1987, and the Las Vegas Convention and Visitors Authority maintains three offices in Europe and Asia.

As I have discussed in detail in previous articles, there are a variety of factors that account for the rapid increase in state and local government involvement overseas.<sup>15</sup> Above all, the imperatives of complex global interdependence are pushing the noncentral governments to be active participants at the international level. In the realm of foreign direct investment (FDI), the United States ranks as the number one host nation in the world, and more than five million Americans now work for foreign-owned companies situated on U.S. soil. States and cities are spending hundreds of millions of dollars annually in programs and incentives in an effort to attract this direct investment to their jurisdictions. Globally, the flow of FDI has increased ten-fold in real terms from the end of the 1970s to the end of the 1980s.<sup>16</sup>

Because of the lack of economic diversity in several states and many municipalities, U.S. direct investment abroad has received mixed reviews from noncentral government leaders. Some consider that such investment is indispensable if U.S. firms are to remain globally competitive and believe that in the long run more jobs will be created locally by enterprises that have well-established international networks. Approximately 2,000 American companies have established 21,000 foreign subsidiaries in 121 countries, and these subsidiaries annually manufacture and sell abroad products worth about U.S. \$700 billion.<sup>17</sup>

Conversely, other noncentral government leaders are convinced that American corporations are abandoning facilities in the United States for countries with cheap labor and minimal environmental and worker protection standards. In a vote at the 1991 annual meeting of the U.S. Conference of Mayors, the delegates refused to approve a resolution supporting the proposed North American Free Trade Area (NAFTA).<sup>18</sup> These delegates feared that companies would eliminate high-paying jobs in urban areas and transfer the work to Mexico where wages and fringe benefits in the manufacturing sector are only one-sixth to one-seventh U.S. levels.

In recent years, world trade volume has also easily outdistanced the aggregate growth in national economies.<sup>19</sup> Global trade in goods and services added up to about U.S. \$4 trillion in 1990, a thirteen-fold increase in real terms since 1950.<sup>20</sup> Unfortunately, the United States experienced a staggering trillion-dollar merchandise trade deficit during the 1980s, but its performance is now improving significantly.<sup>21</sup> The U.S.

annual current account deficit finally dropped below \$100 billion in 1990, the lowest since 1983, and there have now been four consecutive years of declines in its trade deficits with the other key industrial nations. Merchandise exports topped U.S. \$389 billion in 1990, and the United States has recently surpassed Germany as the world's leading exporting nation.

Approximately 100,000 American businesses are now involved in export activity, but the U.S. Census Bureau estimates that 3,600 firms account for over three-quarters of all merchandise exports.<sup>22</sup> State and local governments recognize that tens of thousands of small and medium-sized businesses are capable of entering or expanding export markets, and all of the states and many of the metropolitan governments have established assistance programs for these businesses.

Globalization has also precipitated a major restructuring in many industries and a growing recognition in the United States of the implications of the internationalization of production. Robert Reich clearly illustrates this internationalization phenomenon in the following statement:

What's traded between nations is less often finished goods than specialized research, design, fabrication, management, marketing, advertising, consulting, financial and legal services, as well as components and materials.

When an American buys a Pontiac le Mans from General Motors, for example, he engages unwillingly in an international transaction. Of the \$10,000 paid to GM, about \$3,000 goes to South Korea for routine labor and assembly operations, \$1,850 to Japan for advanced components (engines, transaxles, and electronics), \$700 to the former West Germany for styling and design engineering, \$400 to Taiwan, Singapore, and Japan for small components, \$250 to Britain for advertising and marketing services, and about \$50 to Ireland and Barbados for data processing. The rest—less than \$4,000—goes to strategists in Detroit, lawyers and bankers in New York, lobbyists in Washington, insurance and health care workers all over the country, and to General Motors shareholders all over the world.<sup>23</sup>

Even though the United States created 19 million net new jobs during the 1980s, almost two million jobs were lost in the manufacturing sector. States and cities have all had to cope with the costs and benefits of restructuring. Detroit has been badly hurt by the downturn in the domestic automotive industry, whereas Marysville, Ohio, Georgetown,

Kentucky, and Smyrna, Tennessee, have profited from Honda, Toyota, and Nissan building huge assembly plants in their localities. With the marked decline in international petroleum prices in the early 1980s, Houston lost 225,000 jobs in a five-year period. New York City once provided headquarters for one-half of America's 30 largest industrial firms. Today, only two remain.<sup>24</sup> In the period between mid-1990 and mid-1991, recession and corporate restructuring were responsible for New York City experiencing a net job loss of 84,000.

International tourism has also emerged as an increasingly important revenue source for many noncentral governments. In 1991, a record 41.5 million foreign residents were expected to visit the United States and spend U.S. \$57 billion.<sup>25</sup> Approximately 20 percent of all the tourists in New York City are from other countries, and they annually spend more than U.S. \$2 billion.<sup>26</sup>

In addition, immigration is in the process of transforming several American states and cities. California had a net increase of 3.2 million new entrants into the state in the 1980s, and 2.3 million of these came from other countries.<sup>27</sup> During the same decade, New York City attracted 854,000 immigrants, mostly from developing countries.<sup>28</sup> One-third of all New York City residents are now foreign born, up from one-fourth just a decade ago. Because of this immigration, New York City experienced a modest 3.5 percent population increase during the 1980s. Los Angeles added more people than any other major U.S. city during the past decade, and many of these new residents were immigrants. In both New York City and Los Angeles, the so-called "white" population now constitutes a minority group.<sup>29</sup>

The U.S. Immigration Act of 1990 also provides economic incentives for states and municipalities to attract a special category of immigrants. This act establishes up to 10,000 annual investor-immigrant visas for foreign residents and their families willing to invest large amounts of money in U.S. businesses and create jobs for Americans. Seven thousand of these visas require an investment of at least U.S. \$1 million, and 3,000 require an investment of at least U.S. \$500,000 in high-poverty or rural areas. Municipal governments are interested in attracting the lion's share of these immigrants, and many sponsor enterprise zone programs that will qualify as investments in high-poverty areas.

There are several additional factors other than complex economic interdependence and the internationalization of trade, investment, tourism, and financial linkages that help explain the growing global involvement of noncentral governments. These would include the uneven distribution

of economic gains in America's vast federal system, electoral considerations, significant growth in noncentral governments plus an improved capacity to interact with international actors, and a willingness on the part of the national government to permit noncentral governments to strengthen linkages abroad.<sup>30</sup>

On the other hand, this phenomenon in many respects is attributable to the traditional role of state and local governments to protect their revenue base and to safeguard the interests of the people they represent. The collective fiscal health of these noncentral governments is currently the worst since the recession period of the early 1980s, with 28 states and one-half of the major cities struggling with deficits in mid-1991.<sup>31</sup> In addition, even though the federal government provided in 1990 U.S. \$131 billion in grants-in-aid to state and local governments, this represented only 17 percent of noncentral governments revenues, compared with 25 percent of total revenues in the late 1970s. The decline in federal assistance to municipalities is even more pronounced, with Washington providing 6.4 percent of total city revenues in 1991 versus 17.7 percent in 1980.<sup>32</sup> The problem is compounded further by the federal government's propensity in recent years to "mandate" new responsibilities to state and local governments without transferring adequate funds to pay for these predominantly social-welfare programs. Moreover, the money that is made available by Washington has many strings attached and only a small portion can be used for economic development purposes. Indeed, 60 cents of each dollar of federal grant money is now earmarked for only two welfare programs—Aid to Families With Dependent Children and Medicaid (a health insurance program for low-income individuals and families)—versus only 40 cents for these programs in 1980.<sup>33</sup>

In spite of the myriad social problems faced at the local level, the prospects for a big increase in federal funding to municipal governments are very dim. The U.S. federal debt approached \$3.5 trillion by the end of 1991, and annual interest payments on this debt will surpass \$200 billion. Proportionally, interest payments are the fastest growing budgetary allocation of the federal government, and money spent on this debt liability is far greater than the allocations to state and local governments. Moreover, two-thirds of the budgetary allocations of a typical state are now earmarked for only three programs: welfare, Medicaid, and corrections.

## **SPECIFIC PROGRAMS SPONSORED BY NONCENTRAL GOVERNMENTS IN THE UNITED STATES**

At the grass-roots level, state and local officials are keenly aware of the impact that both national and global competition are having on the people they represent. In the spirit of "thinking globally and acting locally," they are now sponsoring a broad range of programs to facilitate economic development within their areas of jurisdiction.

### **Industrial Strategies**

Some observers now refer to the state governments as the "dynamos" of the federal system, and there is no doubt that their policies will have a growing impact during the 1990s upon commercial relations at home and abroad.<sup>34</sup> Indeed, state governments are clearly in the process of developing their own industrial policies, and this will certainly have an impact on America's prospects in the international trade and investment arenas. Two dozen states are now directly involved in the venture capital game, committing in excess of U.S. \$300 million for projects over the past few years. State agencies also provide low-interest loans, help in securing private financing, and technical managerial assistance. As an illustration, the Connecticut Product Development Corporation has invested more than U.S. \$12 million in approximately 60 small businesses. The state receives a five percent royalty on products sold by the companies backed by the venture capital.<sup>35</sup> The Connecticut state government has also entered into a controversial agreement to purchase 47 percent of the equity in Colt Manufacturing Company, a major supplier of automatic weapons. Pennsylvania's Ben Franklin Partnership has provided over U.S. \$80 million for state-based technology projects, and the Massachusetts Technology Development Corporation has distributed more than U.S. \$10 million in seed money.<sup>36</sup> Many states have also set up industrial parks, enterprise zones, business incubators, and greenhouse projects to spur economic development, with the latter program geared to the construction of special buildings to house new high-technology businesses.

### **Export Assistance**

All 50 states and many major municipalities now provide significant export assistance to small and medium-sized firms. As mentioned

previously, the states spent U.S. \$92 million in staffing and maintaining their trade agencies in 1990, almost triple the expenditures of the mid-1980s.

By the end of 1988, 27 states had passed legislation to implement some form of export financing. Twenty-two of these programs were operational with U.S. \$32 million allocated for financing purposes, most commonly for loan guarantees to commercial banks willing to issue loans to small and medium-sized exporters. The California Export Finance Office (CEFO) has emerged as a leader in providing financial support to smaller enterprises, and from its inception in 1985 through June 1991, CEFO guaranteed over 200 working-capital loans supporting U.S. \$350 million in new export sales.<sup>37</sup> The U.S. Export-Import Bank has also been working with 12 state and city governments to provide joint financing and other types of assistance to small and medium-sized firms, helping to support U.S. \$40 million in exports through the end of 1989.

All 50 state governments also sponsor trade seminars and provide a host of other assistance programs to companies interested in exporting goods or services.<sup>38</sup> Approximately 220 California companies participated in California World Trade Commission trade show exhibits from 1985 through the spring of 1989, facilitating U.S. \$66 million in export sales. These exhibits were focused on such areas as aerospace, telecommunications, computers, medical and scientific instruments, sports and leisure, and energy and environmental technologies.<sup>39</sup> The National Governors' Association has also established a special ExpoLink database service to be used by the states to ascertain three-digit level standard industry classification (SIC) export leads.<sup>40</sup> At the municipal level, the U.S. Conference of Mayors has conducted trade exhibitions abroad since 1980, permitting city officials to promote local goods.<sup>41</sup> All of these programs facilitate the efforts of smaller companies to gather export data and to market their products abroad.

### **Reverse Investment Activities**

Many states and communities have been engaged in a rather controversial policy of offering lucrative incentive packages in order to attract or retain individual businesses. Some of these incentive packages run into the tens of millions of dollars per deal, and they often include: (1) tax forgiveness for up to 20 years; (2) low-interest loans; (3) grants; (4) donations of land; and (5) job-training subsidies.<sup>42</sup> For example, in 1985 the state of Illinois, McLean County, and the cities of Normal and

Bloomington pieced together an incentive package worth U.S. \$168 million to attract the Chrysler/Mitsubishi Diamond Star auto plant. The package included the creation of a special enterprise zone authorized to operate through 1998 and such benefits as (1) infrastructure improvements specifically geared to Diamond Star's requirements, (2) services such as worker training and Japanese-style education for the children of Japanese managers, (3) tax abatements, and (4) priority access to industrial revenue bonds.<sup>43</sup>

Other leading business attraction incentive packages include Pennsylvania's ill-fated U.S. \$70 million offer to Volkswagen in the late 1970s. The venture was unsuccessful, and VW closed its Pennsylvania plant in 1988 but will continue to collect incentives through most of the remainder of the century. In later bidding contests, Ohio agreed to provide Honda with U.S. \$70 million in incentives, and Michigan offered Mazda U.S. \$120 million. Thirty-nine states also entered the bidding war for Nissan Motor Company's proposed truck assembly plant. Tennessee won the contest and will dole out U.S. \$66 million in incentives to the Japanese company. The taxpayers of Kentucky will provide an estimated U.S. \$325 million in incentives to Toyota over a 20-year period in order to entice that Japanese firm to construct a new automobile assembly plant at Georgetown.<sup>44</sup>

### **Cooperative Linkages with Foreign Noncentral Governments**

To enhance cooperative ties and facilitate economic linkages, certain noncentral governments have strengthened relations with their counterparts in other nations. This is particularly the case between the United States and Canada. Eleven New England governors and Eastern Canadian premiers have met annually since 1973 and have established a broad range of institutional agreements. For instance, at the 1990 annual meeting of this group held in Connecticut, the leaders spent time on the regional ramifications of the Canada-U.S. Free Trade Agreement and solutions to the acid rain problem. Further west, governors from eight states and premiers from two provinces have agreed on a charter to protect water rights in the Great Lakes.<sup>45</sup> Representatives of Alaska, British Columbia, and the Yukon also meet on a regular basis, as do officials of several other provinces and border states.

Tourism is also an area where cooperation among subnational units in neighboring nations is not unusual. This is a multibillion dollar industry with record numbers of foreign visitors coming to North

America over the past several years. The state of Washington and the province of British Columbia have agreed to set aside \$75,000 each for joint advertising campaigns. The New England governors and eastern Canadian premiers also work together to entice residents from North America and abroad to visit their region. These regional contacts may also lead to lucrative transborder economic arrangements, as illustrated by the Quebec government's agreement with New York and some of the New England states to export more than U.S. \$30 billion worth of electricity over the next two decades.

On the border with Mexico, periodic meetings are held between U.S. and Mexican governors. One such meeting was held in Las Cruces, New Mexico, in December 1987, and was attended by the governors of New Mexico, California, Arizona, and Texas, and the governors from Mexico's six northern border states of Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas. The main items of discussion were the maquiladora operations, strategies for economic development and cooperation, and environmental concerns. The maquiladora facilities, which provide 500,000 jobs in these northern Mexico states, may also support up to 3,500 U.S. businesses and utilize the services of 20,000 U.S. suppliers, making the economies along the southern border increasingly interdependent.<sup>46</sup>

On the other hand, geographic proximity is not a prerequisite for the establishment of subnational government linkages abroad. The Southeast U.S.-Japan Association has met annually for more than a dozen years, permitting state and local officials and business representatives from the American South to meet with their counterparts in Japan. Several states also have signed special economic accords with subnational governments outside of North America. For instance, Illinois has entered into trade pacts with China's Liaoning province and the Republic of Russia. The Council of American States in Europe (CASE) also works with the U.S. Foreign and Commercial Service and U.S. Embassies in the sponsorship of periodic "Meet America Days."

### CHALLENGES TO INTERGOVERNMENTAL POLICY COORDINATION

Transgovernmental and transnational interactions have definitely emerged as significant dimensions of international relations in a new era of complex global interdependence. In particular, subnational government units in federal systems have greatly expanded their contacts in the



international sphere, especially insofar as increasingly important trade and investment activities are concerned. As the National Governors' Association has emphasized, "not since the founding days of our nation have the states been so exposed to the competitive forces of international commerce."<sup>47</sup>

How might such activities hinder national unity or the ability of the national government to carry out its domestic and international responsibilities? First of all, in rare cases international involvement has been used by certain noncentral governments to enhance their own autonomy within their national setting. For a number of years, the Quebec government under the leadership of the Parti Québécois (PQ) viewed international involvement as a means of enhancing Quebec's political sovereignty. Quebec maintained very special ties with France and other francophone nations and actually persuaded some notable leaders abroad to support Quebec's bid for sovereignty-association through democratic means. Prior to its famous 1980 referendum on sovereignty-association, the Quebec government also spent a great deal of money in the United States in an effort to convince the American business community that trade and investment linkages would not be jeopardized if Quebec were to achieve more sovereignty. The PQ government also tried unsuccessfully to convince its own voters that under a sovereignty-association arrangement, any economic losses caused by a drop in trade with the rest of Canada would eventually be more than offset by enhanced trade links with the United States and other nations. With the failure of the Meech Lake constitutional discussions, the scenario of 1980 may be replicated at some point in the 1990s, and the Canada-U.S. Free Trade Agreement (FTA) will be used by pro-independence forces to persuade voters that growing international economic linkages will compensate for any diminution in Quebec-Canada trade ties.

Second, cutthroat competition among subnational units for reverse direct investment is carried out at the expense of the general public. The United States and Canada rank as the leading host nations in the world for foreign direct investment. Overseas firms are entering these North American markets because of their attractiveness as investment havens and because of the desire to have a foothold in these markets in the event of future protectionist trade wars that would pit North America, Japan, and the European Community against one another. Thus, from a national vantage point, there is little rationale to offer huge incentive packages to these foreign-based enterprises. Nonetheless, because of the nature of the North American federal systems and the inability or unwillingness of the

national governments to constrain subnational units from entering into such competition, the incentive game continues at the expense of the taxpayers.

And finally, perhaps the most inherent risk is the diminution in the federal government's ability to speak with "one voice" in the foreign policy arena. This is manifested in many ways as illustrated by the following examples.

In June 1989, Oregonians voted overwhelmingly in favor of an initiative measure to amend the state constitution in order to mandate that logs cut on state-owned forests must be processed within the state. Up until that time, almost one-half of the logs had been exported in unprocessed form, mostly to Asian nations on the Pacific Rim.<sup>48</sup> That same year, Texas Agricultural Commissioner Jim Hightower organized the shipment of 18 tons of Texas-produced, hormone-free beef to England. This occurred at a time when the U.S. government and the Commission of the European Community were engaged in a bitter dispute over American shipments of hormone-treated beef to Europe. Hightower's action was vehemently opposed by the U.S. federal government, the Texas Farm Bureau, and the American chemical industry. The U.S. Department of Agriculture refused to certify that the meat was drug-free but finally acquiesced and allowed EC inspectors to offer the necessary certification.<sup>49</sup>

In the summer of 1986, the governors of Maine, Vermont, and Massachusetts refused to send their National Guard units for training exercises in Honduras. Congress later passed a law prohibiting state leaders from exercising this option, and in a court challenge launched by some of the states, the Supreme Court decided in favor of the U.S. government's position. In this case, 29 state governments filed a brief supporting Washington, D.C.'s position, whereas seven backed the right of governors to decide when and where National Guard units would be deployed in times of peace.

More than 120 cities and counties have also passed resolutions banning nuclear weapon's production within their areas of jurisdiction. The U.S. Department of Justice filed what proved to be a successful suit in September 1989 challenging the constitutionality of one such ordinance approved by the voters of Oakland, California. The suit alleged that Oakland's law "seriously undermines the ability of the United States navy to supply, repair, and maintain fleet units operating throughout the Pacific region," and "substantially impairs the ability of the U.S. Department of Energy to oversee and manage nuclear materials research." The Oakland

ordinance was adopted by referendum and prohibited the manufacture or storage of nuclear weapons and imposed restrictions upon the transportation of nuclear radioactive materials through the city. This municipal action particularly riled the Pentagon because one of the U.S. navy's most important supply depots is situated in Oakland. Pentagon officials suffered further stress when Maine voters approved a citizen's initiative in 1989 banning cruise-missile testing over their state. However, the initiative was nonbinding and could effectively be ignored by both state and federal authorities.

In August 1989, the treasurers of the states of Maine, Nebraska, Delaware, North Dakota, Idaho, and Pennsylvania met in Harrisburg, Pennsylvania, and signed the Reciprocal Investment Commitment of Conscience. This document commits these states to investing public-employee pension funds in projects that spur on each other's local economic development and defend hometown companies against hostile takeovers from domestic or foreign enterprises. Nationwide, public-employee pension funds have assets exceeding U.S. \$700 billion. In July 1991, President George Bush announced that economic sanctions against South Africa would be lifted. Later that very same week, Mayor David Dinkins of New York City announced the tightening of municipal sanctions against banks that were willing to do business with South Africa.<sup>50</sup>

This anecdotal evidence of frictions between national and regional governments over foreign policy issues does not mean that Washington has lost control over the most important issue areas. In addition, both the commerce and supremacy clauses in the U.S. constitution provide federal officials with a strong hand in reasserting control in many domains now being challenged by some noncentral government actors. Nevertheless, globalization inevitably accentuates the phenomenon known as "intermestic" politics, or in other words, the overlap of domestic and foreign policy. Today, it is very difficult to pinpoint a national issue that does not exhibit both a domestic and international dimension. Moreover, the intermestic dimension applies increasingly not only to policies enacted in Washington, D.C., but also in state capitals and city halls. This is particularly true in the economic realm. Thus, the U.S. Trade Representative can travel to GATT headquarters in Geneva and continue to preach the virtues of free and unimpeded trade, while at the same time state and local government officials back home enact statutes that run counter to this free-trade philosophy. For example, unitary taxation may violate the U.S. government's bilateral tax treaty obligations, and noncentral

government procurement codes, export subsidy schemes, and restrictions on economic ties with selected nations may all violate the "spirit" of GATT (General Agreement on Tariffs and Trade) obligations.

On the other hand, there are many positive features to subnational activism, and these efforts at the grass-root's level may be the key to future U.S. international competitiveness. In this respect, the National Governors' Association is prodding its members to push for the reinstatement of foreign language proficiency as a requirement for college admission, the restoration of geography as a core subject in school curricula, the introduction of foreign language training at the elementary school level, and state-sponsored courses in international commerce for the business community. These and other measures should help prepare the citizenry for a truly internationalized economy.

Indeed, the vast majority of economic development policies implemented by U.S. state and local governments is innovative and exactly what the doctor ordered as part of the cure for the lack of U.S. economic competitiveness. Yet, much more study is needed on the noncentral governmental dimension of international relations. U.S. trade officials have paid far too little attention to the dynamic policies now being pursued by state and local governments, and noncentral governmental leaders have not yet asked the hard questions concerning how their global pursuits either enhance or frustrate the national interests of the United States.

Undoubtedly, some fine tuning of existing subnational policies is needed, and some programs will have to be modified or even eliminated in order to comply with GATT, FTA, and perhaps future NAFTA standards. In an effort to improve intergovernmental coordination, Washington and the states should also agree to set up task forces that would examine the impact these myriad international activities are having on federal relations, U.S. foreign policy, and the economic competitiveness of the nation as a whole. At the same time, however, federal officials should recognize that noncentral governmental involvement in the international arena is destined to grow. Consequently, Washington should be doing all in its power to facilitate the positive efforts of state and local officials to prepare small and medium-sized firms and the average American for the momentous global competition of the 21st century.

## NOTES

<sup>1</sup>Noncentral governments in unitary systems have also dramatically increased their international involvement, especially the prefectures in Japan and the departments in France, but, on the whole, much of this activity is centered in federal systems of government.

<sup>2</sup>This lack of global awareness on the part of the American people is manifested in numerous cross-national surveys. For example, the recent nine-nation Gallup survey sponsored by the National Geographic Society placed Americans aged 18 to 24 last in terms of geographical literacy. Only half of the Americans knew that the Sandinistas and the Contras had been fighting in Nicaragua and that the Arabs and the Jews were quarreling in Israel. One in three could not name a single member of NATO, and 14 percent could not pick out the United States on the world map.

<sup>3</sup>The 11 states were Alaska, Idaho, Iowa, Kentucky, Louisiana, Montana, Nebraska, North Dakota, Oklahoma, West Virginia, and Wyoming. The District of Columbia also lost population. One should remember that labor mobility is especially pronounced in the United States. It is estimated that U.S. manual workers are 10 times more likely than their counterparts in Great Britain to move for employment purposes. See the *Economist*, July 29, 1989, 55.

<sup>4</sup>*International Herald Tribune*, April 28, 1990, 16.

<sup>5</sup>Robert Guskind, "Games Cities Play," *National Journal*, March 18, 1989, 635.

<sup>6</sup>In the areas of state and local government and of federalism, see Richard D. Bingham, *State and Local Government in an Urban Society* (New York: McGraw-Hill, 1986); James MacGregor Burns, J. W. Peltason, and Thomas E. Cronin, *State and Local Politics: Government by the People*, 6th ed. (Englewood Cliffs, N.J.: Prentice Hall, 1990); Dennis L. Dresang and James J. Gosling, *Politics, Policy, and Management in the American States* (White Plains, N.Y.: Longman, 1989); Thomas R. Dye, *Politics in States and Communities*, 7th ed. (Englewood Cliffs, N.J.: Prentice Hall, 1991); Roger Gibbins, *Regionalism* (Toronto: Butterworths, 1982); John J. Harrigan, *Politics and Policy in States and Communities*, 4th ed. (Glenview, Ill.: Scott, Foresman, 1990); Jeffrey R. Henig, *Public Policy and Federalism* (New York: St. Martin's, 1985); Richard H. Leach and Timothy O'Rourke, *State and Local Government: The Third Century of Federalism* (Englewood Cliffs, N.J.: Prentice Hall, 1988); Robert S. Lorch, *State and Local Politics*, 3d ed. (Englewood Cliffs, N.J.: Prentice Hall, 1990); David L. Martin, *Capitol, Courthouse, and City Hall*, 7th ed. (White Plains, N.Y.: Longman, 1988); and David C. Nice, *Federalism: The Politics of Intergovernmental Relations* (New York: St. Martin's, 1986).

<sup>7</sup>In the area of international relations, see Robert J. Art and Robert Jervis, *International Politics*, 2d ed. (Boston: Little, Brown, 1985); Inis L. Claude, Jr., *States and the Global System* (New York: St. Martin's Press, 1988); Karl W.

Deutsch, *The Analysis of International Relations*, 3d ed. (Englewood Cliffs, N.J.: Prentice Hall, 1988); Richard Falk, *The Promise of World Order* (Philadelphia: Temple University Press, 1988); Barry B. Hughes, *Continuity and Change in World Politics* (Englewood Cliffs, N.J.: Prentice Hall, 1991); Walter S. Jones, *The Logic of International Relations*, 7th ed. (Glenview, Ill.: Scott, Foresman, 1991); K. J. Holsti, *International Politics: A Framework for Analysis*, 5th ed. (Englewood Cliffs, N.J.: Prentice Hall, 1988); Charles W. Kegley, Jr., and Eugene R. Wittkopf, *The Global Agenda*, 3d ed. (New York: McGraw-Hill, 1992); Charles W. Kegley, Jr., and Eugene R. Wittkopf, *World Politics: Trend and Transformation*, 3d ed. (New York: St. Martin's Press, 1989); William Clinton Olson, *The Theory and Practice of International Relations*, 8th ed. (Englewood Cliffs, N.J.: Prentice Hall, 1991); John T. Rourke, *International Politics on the World Stage*, 3d ed. (Guilford, Conn.: Dushkin Publishing Group, 1991); Bruce Russett and Harvey Starr, *World Politics: The Menu for Choice*, 3d ed. (San Francisco: W. H. Freeman, 1988); John G. Stoessinger, *The Might of Nations*, 9th ed. (New York: Random House, 1990); Peter A. Toma and Robert F. Gorman, *International Relations* (Belmont, Calif.: Brooks/Cole, 1991); and David W. Ziegler, *War, Peace, and International Politics*, 5th ed. (Glenview, Ill.: Scott, Foresman, 1990).

<sup>8</sup>Keohane and Nye refer to "interstate interactions" as official exchanges between representatives of national governments. "Transgovernmental interactions" are linked to "sets of direct interaction among subunits of different governments that are not controlled or closely guided by the policies of cabinets or chief executives." A final category, "transnational interactions," deals with "the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an international organization." See Keohane and Nye, "Transgovernmental Relations and International Organizations," *World Politics* 27 (1974): 39-62, and *Transnational Relations* (Cambridge: Harvard University Press, 1972), xii. One should also consult Keohane's book, *Institutions and State Powers* (Boulder: Westview, 1989).

The activities of noncentral governments in the international system would be considered as a subset of transgovernmental interactions, but this subset is too imprecise. For example, transgovernmental actors would also include most national government representatives stationed abroad, most civilian and military personnel attached to national governments whether at home or abroad, and most officials with international or regional organizations.

<sup>9</sup>See Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987), 259.

<sup>10</sup>"National Income and Product Account," *Survey of Current Business*, March 1991, 11.

<sup>11</sup>National Association of State Development Agencies, *1990 State Export Program Database* (Washington, D.C.: NASDA, 1990), 7, 19.

<sup>12</sup>*Governors' Weekly Bulletin*, March 30, 1990, 1, and *Nation's Cities Weekly*, July 1, 1991, 6. In 1989, governors from 41 of the 55 U.S. states and territories made 82 trips to 35 countries. Forty-eight trips were primarily to encourage exports and 32 to increase investment. Japan was the leading country visited, with 19 trips, followed by 13 trips to Belgium.

<sup>13</sup>Wilbur Zelinsky, "Sister City Alliances," *American Demographics*, June 1990, 43.

<sup>14</sup>*Ibid.*, 44-45. Zelinsky discusses in particular a business alliance between Louisville, Kentucky, and Montpellier, France, and business linkages between Baltimore, Maryland, and Xiamen, China, and Portland, Oregon, and Sapporo, Japan.

<sup>15</sup>Earl H. Fry, "The Impact of Federalism on the Development of International Economic Relations: Lessons from the United States and Canada," *Australian Outlook: The Journal of International Affairs* 43 (April 1989): 19-25. A laundry list of factors would include the following: (a) the imperatives of complex global interdependence; (b) differing economic development patterns and priorities of noncentral governments; (c) electoral considerations; (d) a decreasing reliance on federal transfer payments; (e) the expanding scope and capacity of noncentral governments; (f) the continuous quest to add new revenues; (g) expanded global linkages and the internationalization of production; (h) the stimulus to protect dominant existing industries; (i) a willingness to take strong moral stances on international issues such as apartheid, nuclear proliferation, and U.S. military commitments abroad; and (j) a climate of uncertainty concerning the constitutional parameters of noncentral government involvement overseas.

<sup>16</sup>*Economist*, December 22, 1990, 44. At the end of the 1980s, the annual flow of FDI exceeded \$100 billion (measured in 1980 dollars).

<sup>17</sup>*Wall Street Journal*, March 27, 1991, A16, and *The New York Times*, February 26, 1991, C2.

<sup>18</sup>The U.S. Conference of Mayors held its annual meeting in June 1991 in San Diego. See *U.S. Mayor*, July 1, 1991, 8, 11.

<sup>19</sup>For example, world trade volume grew 5 percent in 1990, whereas the global economy grew only 3 percent.

<sup>20</sup>*Economist*, December 22, 1990, 44.

<sup>21</sup>This trade deficit includes transportation charges and insurance fees associated with import and export activity. During the 1982-1990 economic expansion, U.S. exports increased in real terms by 93 percent.

<sup>22</sup>Martha E. Mangelsdorf, "Unfair Trade," *Inc.*, April 1991, 28.

<sup>23</sup>Robert Reich, "The Myth of 'Made in the U.S.A.,'" *Wall Street Journal*, July 5, 1991, A6.

<sup>24</sup>*Economist*, June 1, 1991, 19.

<sup>25</sup>These are estimates of the U.S. Travel and Tourism Administration made in a report issued on May 13, 1991. In 1990, 38.8 million foreign residents visited the United States and spent \$51.1 billion. Twenty-five million of these visitors came from neighboring Canada and Mexico. These tourists helped to provide the United States with a record U.S. \$23 billion surplus in trade in services in 1990.

<sup>26</sup>In 1989, 25 million tourists visited New York City, with 1 in 5 being a foreign resident. Collectively, these tourists spent about U.S. \$9 billion in the metropolitan area.

<sup>27</sup>*The New York Times*, February 21, 1991, A14.

<sup>28</sup>These figures were compiled by the U.S. Immigration and Naturalization Service.

<sup>29</sup>New York City had 7.3 million people in 1990, with 43.2 percent being white, 25.2 percent non-Hispanic black, 24.4 percent Hispanic, and 7 percent Asian (see *The New York Times*, March 22, 1991, B1). Los Angeles had 3.5 million people, with 40 percent being Hispanic, 38 percent white, 13 percent black, and 10 percent Asian. These percentages would change significantly when the entire metropolitan area is considered. New York City ranked as the largest U.S. metropolitan area in 1990 with 18 million people, and Los Angeles ranked number two with 14.5 million people.

<sup>30</sup>All of these factors are explored in detail in Fry, "Impact of Federalism."

<sup>31</sup>In a National League of Cities' survey of 525 municipalities that was released in July 1991, 8 of every 10 cities had increased taxes or fees in the past year, and two-thirds had frozen hiring or cut their work forces. Over one-quarter expected spending to exceed revenues by more than 5 percent during 1991, a budget gap considered as "severe." Over the previous 8 years, no more than one-eighth of cities faced a deficit exceeding 5 percent of their total budget. When asked what was responsible for their budget problems, 87 percent of respondents mentioned the skyrocketing costs of health benefits, 69 percent the recession, and 66 percent the increasing cost of solid-waste disposal. See the AP wire service, July 8, 1991.

<sup>32</sup>*Wall Street Journal*, February 5, 1991, A1.

<sup>33</sup>*Fortune*, June 3, 1991, 21.

<sup>34</sup>In Neal R. Peirce, "States: Dynamos of the Federal System," *State Government News*, December 1989, 23, the author asserts that the "1980s indisputably have been the decade of state governments. Those in doubt need only take a look at virtually any major domestic policymaking arena—welfare reform, early childhood care, education, environmental protection, homelessness, infrastructure, foreign trade promotion and health-care cost containment."

<sup>35</sup>*Christian Science Monitor*, November 20, 1984, 37.

<sup>36</sup>*Wall Street Journal*, November 9, 1987, 27.

<sup>37</sup>California World Trade Commission, *Newsletter*, Summer 1991, 3.

<sup>38</sup>*Governors' Weekly Bulletin*, April 14, 1989, 1.



<sup>39</sup>California World Trade Commission, *Newsletter*, Spring 1989, 1, 3.

<sup>40</sup>*Governors' Weekly Bulletin*, December 15, 1989, 3.

<sup>41</sup>Peter K. Eisinger, *The Rise of the Entrepreneurial State* (Madison: University of Wisconsin Press, 1988), 296.

<sup>42</sup>Robert Guskind, "Games Cities Play," *National Journal*, March 18, 1989, 634.

<sup>43</sup>Ann H. Elder and Nancy S. Lind, "The Implications of Uncertainty in Economic Development: The Case of Diamond Star Motors," *Economic Development Quarterly* I (no. 1, 1987): 36.

<sup>44</sup>See the *Wall Street Journal*, June 9, 1987, 33. This estimate is based on a study by a University of Kentucky research team that contends that the \$325 million in incentives will bring the state of Kentucky a total of \$632 million in additional revenues. Among the incentives provided to Toyota for its \$800 million facility were 1,500 acres of free land, \$47 million worth of new roads, and \$65 million in employee training programs. The city of Georgetown will also pay for upgraded police, fire, and sewer service, adding up to about \$8 million per year. Before Toyota's arrival, the annual budget of Georgetown was \$2 million. See *Fortune*, December 22, 1986, 45-56.

<sup>45</sup>The Great Lakes Charter was signed in February 1985 by the governors of New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin, and Minnesota, and the premiers of Ontario and Quebec.

<sup>46</sup>*Western Report*, November 23, 1987, 2.

<sup>47</sup>Report of the NGA's conference held at Traverse City, Michigan, July 25, 1987.

<sup>48</sup>*San Francisco Chronicle*, June 28, 1989, A6.

<sup>49</sup>*Economist*, August 26, 1989, 79.

<sup>50</sup>*The New York Times*, July 11, 1991, A7. New York City will withdraw municipal deposits from any bank conducting business with South Africa. In 1990, New York City held deposits in 20 banks with an average account balance of \$250 million.

# *Cascading Subnational Paradiplomacy in an Interdependent and Transnational World*

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## SEGMENTATION AND FRAGMENTATION IN FOREIGN POLICY

### **Beyond the Nation-State: Subnational Actors' Paradiplomacy**

During the post-World War II era, and particularly since the late sixties and early seventies, a variety of subnational, i.e., intrastate actors (federated units, regions, urban communities, cities), reacted to systemic changes at the level of the nation-state and the emergence of an increasingly interdependent world by becoming directly involved internationally.<sup>1</sup> This phenomenon is most common among advanced industrial federations:<sup>2</sup> a pluralistic socio-political system, economic imperatives, and constitutional decentralization encourage the federated units to play a more active and direct role in international affairs through paradiplomacy.

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I wish very much to thank Professors J. Kincaid and P. Leslie as well as D. Brown for their helpful comments; they facilitated my task of revising the text for publication.

I draw this conceptualization from my chapter "An Explanatory Framework for the Study of Federated States as Foreign-Policy-Actors," in H. J. Michelmann and P. Soldatos, eds., *Federalism and International Relations* (Oxford: Oxford University Press, 1990), 34-53.

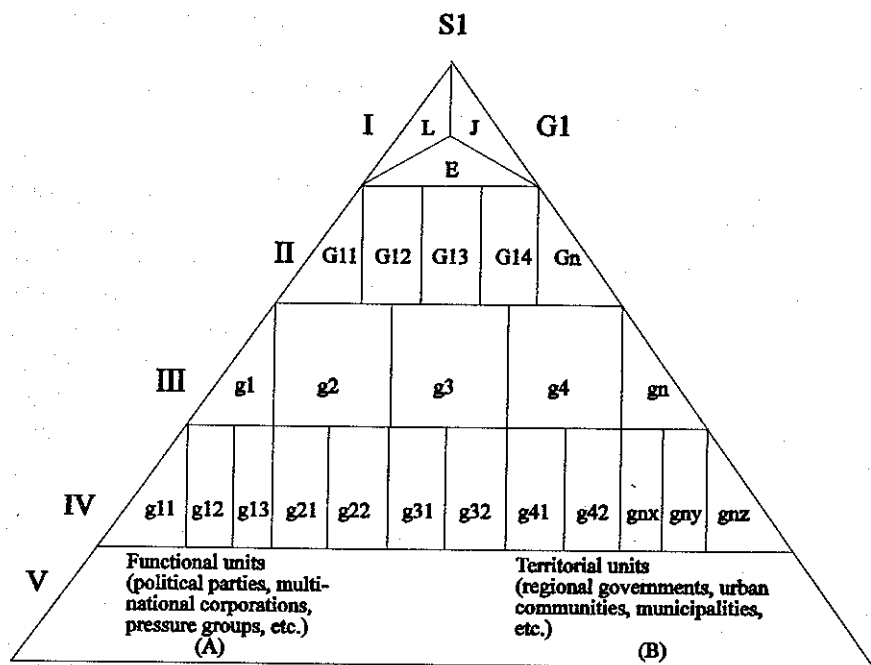
The term *paradiplomacy*—used in specialized literature—refers to direct international activity by subnational actors (federated units, regions, urban communities, cities) supporting, complementing, correcting, duplicating, or challenging the nation-state's diplomacy;<sup>3</sup> the prefix "para" indicates the use of diplomacy outside of the traditional nation-state framework.

The co-existence of layers of actors in external relations led to the concept of segmentation in foreign policy. At times, we could even call it fragmentation, such as when subnational foreign policy roles result from or contribute to a crisis in the nation-state's external relations and provoke the "many voices phenomenon,"<sup>4</sup> i.e., cacophony in foreign policy. We should also draw a distinction between horizontal and vertical segmentation. In the former (designated also as functional segmentation), different departments and agencies within the same level of government are directly involved in international relations. In the latter (also called territorial segmentation) different levels of government, with a territorial basis, have direct foreign policy involvement.

The external relations of federated units (states, provinces, *länder*, cantons) in advanced industrial societies represent a new phenomenon. In qualitative terms, we are witnessing a direct and relatively autonomous external activity, i.e., the federated unit has its own domestic and "foreign service" channels of communications with the international environment and direct links with foreign actors, its own corpus of foreign policy objectives and strategies and increasingly important financial resources devoted to *paradiplomacy*. In quantitative terms, this external activity is noteworthy for the increasing breadth and volume of its relationships.

This external activity, thus, has many of the constitutive elements of a foreign policy (even if the literature often prefers the term "external relations" to "foreign policy").<sup>5</sup> It involves objectives, strategies, institutions, processes, and policy outputs. It maintains foreign missions and direct representation abroad. It concludes agreements with foreign actors, conducts international transactions, and maintains international social communications.

Figure 2.1 illustrates the actors segmentation in foreign policy<sup>6</sup> and its two main levels: horizontal and vertical. Referring to Figure 2.1, we characterize the external relations activity of actors on levels II, III, IV, and V(B) as transgovernmental. Our concept of transgovernmental activity conforms with the Feldmans' usage, i.e., "activity abroad, conducted by the constituent governments of a federal union or subunits of a central government" (or, we add, subunits of a federated

Figure 2.1. *Actors Segmentation in External Relations*

- S1 Federal State 1  
 G1 Federal Government of S1  
 E Executive power  
 L Legislature  
 J Judicial power  
 G11, G12, etc. Federal ministries and agencies  
 g1, g2, etc. Governments of the federated units  
 g11, g12, etc. Ministries and agencies of the federated units  
 Level I Sovereign state actors in external relations  
 Levels II and IV Intragovernmental actors in external relations  
 Level III Nonsovereign state actors (federated) in external relations  
 Level V Intrastate actors in external relations

Source: P. Soldatos, "An Explanatory Framework for the Study of Federated States as Foreign Policy Actors," in H. J. Michelmann and P. Soldatos, eds., *Federalism and International Relations*, op. cit.

government).<sup>7</sup> Keohane and Nye suggest a more limited scope that refers to "subunits of government . . . when they act relatively autonomously from higher authority, in international politics."<sup>8</sup> We expand, however, the Feldmans' concept of transgovernmentalism to add activity conducted abroad by local governments (regional, municipal, etc.).

### **Federated Paradiplomacy: A Phenomenon of Crisis and a Process of Rationalization**

As a phenomenon of crisis, federated paradiplomacy indicates, first of all, dysfunction, i.e., a disenchantment with the international activity that flows from the federal government's foreign policy orientations, methods, actions, and processes, and/or from its inability to effectively promote subnational interests. Such subnational paradiplomacy undermines the notion of foreign policy as an essential attribute of the sovereign state, the "cobweb" concept in external affairs replacing the "billiard ball" image. Thus, the federal government, seeking control mechanisms, often adds to the crisis by burdening the process with bureaucratic supervision mechanisms.

On the other hand, paradiplomacy could lead to a rationalization of foreign policymaking. For that to occur, several key conditions should be present: (1) the federated units' direct paradiplomatic action must not interfere with the overall national interest; (2) both levels of government should be willing to share costs and resources; and (3) they must be able to devise innovative machineries of foreign policy coordination and harmonization, as well as efficient conflict-resolution mechanisms. In an era of specialization, limited public resources, cost-efficiency, and international interdependence, the combined and/or coordinated international involvement of the two levels of government should constitute a rationalization phenomenon that could improve foreign relations.

Unfortunately, federal governments often display uneasiness with such power or role sharing in international relations: their elite's image is more in conformity with the "billiard ball" concept of foreign policy, and there are always practical difficulties in harmonizing "many voices." In some cases (e.g., the Quebec-Ottawa conflict), political motives do not facilitate "conflict-resolution."

## **TOWARDS A CAUSAL FRAMEWORK FOR THE STUDY OF CONTEMPORARY FEDERATED PARADIPLOMACY**

As Daniel Bell eloquently put it, "The national state has become too small for the big problems in life and too big for the small problems."<sup>9</sup> In international relations, systemic disparities and inefficiencies, constitutional-institutional uncertainties, conflicting goals, and competing elites have led to the obsolescence of the nation-state's monopoly in foreign policy.

On the other hand, international interdependence—stemming from regional economic integration, globalization of the economy and of communications, and transnationalization of international relations through the increased role of multinational corporations—invites subnational units, in general, and federated units, in particular, to become direct actors in foreign policy. Interdependence-opportunity and interdependence-vulnerability add to the crisis of the nation-state and call for federated paradiplomacies, parallel to and beyond the sovereign state's diplomacy and foreign policy.

Since Earl H. Fry's chapter deals extensively with the modern causality of federated paradiplomacy, I limit myself here to a list of determinants. Figure 2.2 provides an explanatory framework for the analysis of paradiplomacy<sup>10</sup> in an era where, while "on the political map the boundaries between countries are as clear as ever, on a competitive map, a map showing the real flows of activity, those boundaries have largely disappeared."<sup>11</sup>

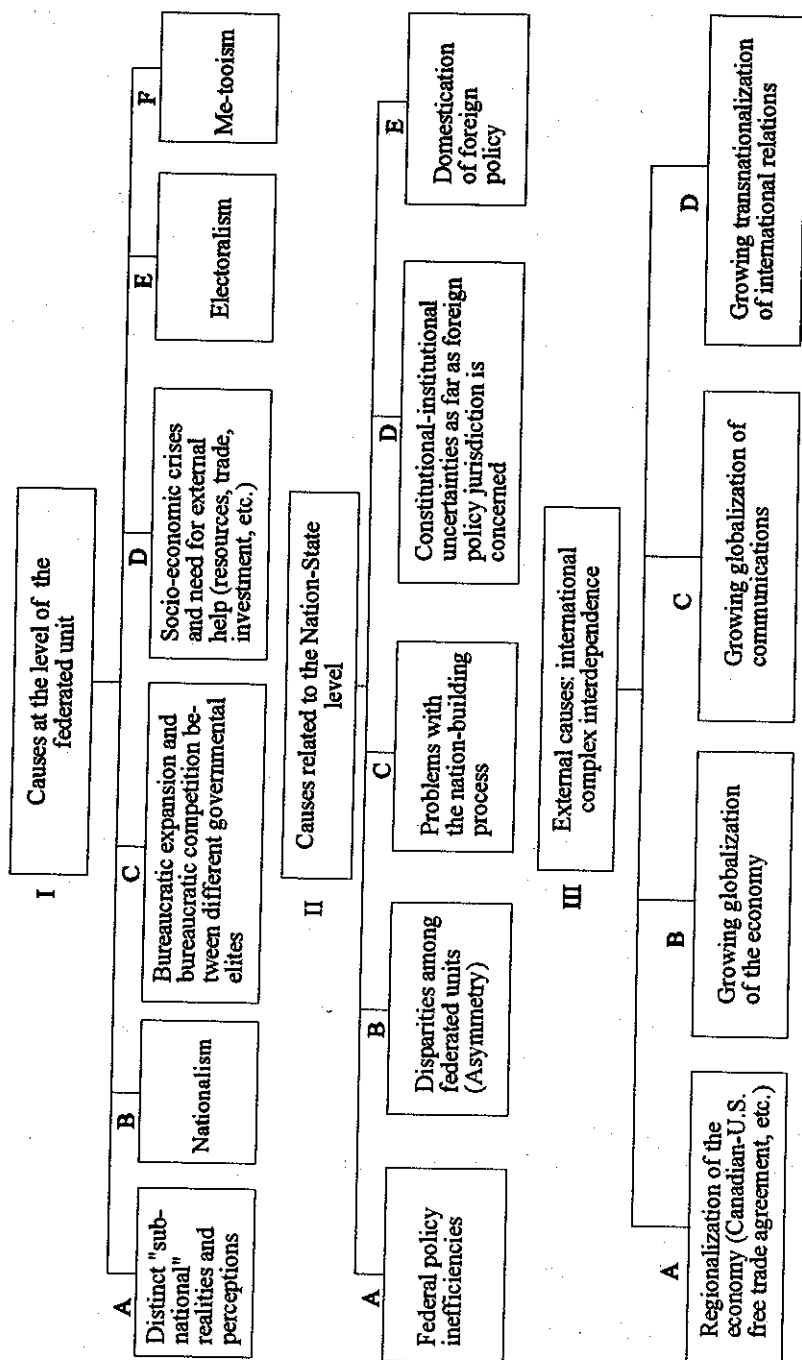
As Rosenau eloquently said, "The universe of global politics has come to consist of two interactive worlds with overlapping memberships: a multicentric world of diverse, relatively equal actors, and a state-centric world in which national actors are primary."<sup>12</sup>

### **THE MODERN PROFILE OF FEDERATED PARADIPLOMACY**

#### **The Structural-Functional Profile of Federated Paradiplomacy and its Dominant Trends**

Table 2.1 enumerates the key features of modern federated international deployment.

Figure 2.2. *Key Determinants of State/Provincial Deployment in the International Economy*



**Table 2.1.    *The Structural-Functional Profile of Federated Paradiplomacy***

- 
1. Establishment of a mechanism for the conduct of international relations, and institutions (home and abroad).
  2. Formulation and implementation of domestic legislation and policies related to international relations (e.g., investment, trade, and fiscal incentives).
  3. Organization of missions abroad.
  4. Hosting of foreign missions.
  5. Conclusion of international agreements.
  6. Participation in international organizations, networks, or conferences.
  7. Hosting of foreign or international institutions.
  8. Organization of international events.
  9. Development of a "supporting services tissue" geared towards international deployment (telecommunications and transport networks, exhibition and convention facilities, etc.).
- 

Systematic observation of the evolution of federated paradiplomacy during the last quarter of the century reveals several dominant trends. The machinery established to conduct external relations becomes increasingly specialized, the bureaucracy expands, and financial resources grow (the Province of Quebec has a specialized Ministry of International Affairs and a large number of paradiplomatic delegations abroad).<sup>13</sup> International involvement increases in scope (it involves "low and high politics"), in volume (there is a great proliferation of bilateral agreements and networks involving federated units), and in reach (federated units deal increasingly with issues that concern the whole international system—e.g., nuclear issues, East-West relations, world trade). Accelerated deployment (leap-frogging) takes place (see for example, the impressive growth since the early seventies of missions abroad, the establishment of delegations and bureaus abroad, and the conclusion of international agreements). Paradiplomatic action becomes increasingly cooperative (paradiplomacy coordinated with federal diplomacy or taking the form of joint action with the federal government) and, when parallel with, i.e., independent of, federal diplomacy, it is more often in harmony than in conflict with national goals and policies. Where the federal system is experiencing disintegrative pressures, however, such as in the Canadian federal system, federated paradiplomacy could be more of a conflictual nature and



increase foreign policy fragmentation. Federated paradiplomacy is increasingly a result of external factors, such as international interdependence, rather than domestic federal-provincial rivalries. As a result of budgetary constraints and rationalization pressures, paradiplomacy starts to rely for its international deployment more upon private actors (e.g., chambers of commerce, multinational cooperations) in a process we call "relative privatization." Finally, cascading paradiplomacy occurs, with growing international deployment of other subnational actors such as regions, urban communities, and cities.

### **Quebec's Foreign Policy Paradigm**

There is a lot of debate among theorists and decision makers on the degree of specificity and even the uniqueness of Quebec's paradiplomacy.<sup>14</sup> It is based on Quebec's pioneer role in inaugurating, during the sixties, the modern paradigm that combines federated involvement in external relations with national motives, cultural components, (see the "French connection"), constitutional controversies, and conflictual dimensions.

Indeed, the particularities of Quebec paradiplomacy are real and ever present in its relations with the federal government and the international environment. The province, however, achieved a certain degree of uniqueness with the Parti Québécois in power until the referendum of 1980. In the postreferendum period, and especially since 1985,<sup>15</sup> Quebec's governments had to accept the restrictive parameters of provincial status and concentrate on a new external relations agenda imposed by international interdependence. A new era of "normalization" followed, with a more pragmatic and low profile paradiplomacy.

Table 2.2 summarizes the particularities of Quebec's foreign policy paradigm during the sixties and the seventies, with some indications on the changes involved in the eighties.<sup>16</sup>

Traits 5, 7, 9, 10, and 12 start to disappear in the eighties. We begin to see a "de-ideologization" and normalization of Quebec's paradiplomacy, with more economic determinism and cooperative (federal-provincial) paradiplomatic action (especially since Quebec's 1985 "Enoncé de politique étrangère" and, even more, since the return to power of Premier Bourassa).

**Table 2.2. *Quebec's Model of Federated Paradiplomacy in the Sixties and Seventies***

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**Key Features**

1. Very extensive and sophisticated network of paradiplomatic institutions at home and abroad.
  2. Specialized and harmonized paradiplomacy through a Ministry of Intergovernmental Affairs, which later became the Ministry of International Relations and today operates as the Ministry of International Affairs.
  3. Recognition by foreign countries such as France of diplomatic status for some of Quebec's offices abroad.
  4. Insistence in signing some agreements with sovereign states (e.g., France).
  5. Preference for parallel paradiplomatic action, independent of the federal government ("doctrine Gérin-Lajoie") and often in disharmony with it (fragmentation).
  6. Constitutional goals aimed at recognition of the principle of "parallélisme des compétences," i.e., Quebec should be able to act internationally in the areas of its domestic jurisdiction (doctrine Gérin-Lajoie), and the granting of some form of constitutional jurisdiction in foreign policy.
  7. Nation-building goals to promote Quebec's international visibility in anticipation of a sovereign Quebec; to obtain foreign support (e.g., from France) and foreign neutrality (from the U.S.), in the process of accession to a sovereign status; and to educate, through such process, Quebec's elites and population in the area of foreign policy.
  8. Foreign-policy divergences between the federal government and Quebec, based on Quebec's "distinct society."
  9. Active paradiplomacy in "high politics" matters and in global issues.
  10. Politicization of Quebec's external activities, transforming Quebec's "low politics" paradiplomacy into "high politics" issues for Canada.
  11. Strong presence of cultural goals in Quebec's "low politics" paradiplomacy.
  12. External cogency (e.g., De Gaulle's role).
- 

**CASCADING PARADIPLOMACY: FEDERATED UNITS IN THE MIDST OF A NEW INTERNATIONAL CITIES ERA**

**A New International Cities Era**

During this last quarter of the century, we are witnessing a new era of international urban actors (cities, urban communities, counties, etc.

with new or renewed international profile).<sup>17</sup> Table 2.3 presents, in a *cumulative fashion* (i.e., not every city has all these ingredients of international profile), our typology of traits of a modern international city.

Some international cities are world leaders, able to influence the direction of international relations in the area of "low politics." They could be called "directional world cities."<sup>18</sup> Our typology of the traits of such directional cities includes the following key ingredients: presence of a critical mass of major international traits (head offices or international divisions of multinational corporations, strategic support services to firms); central position in the national system; central position in the regional system; international activity integrated with that of the national society; international activity that is multifunctional and succeeds in creating links between the various international functions of the city; significant retention of the wealth created through international deployment; central position of the city (alone or in coalition—alliances) in international networks; integrated relations between the decision-making centres of the city and those of other levels of government and of the national society; and in some cases, a larger role within the international system than within the national system.

This international deployment of urban actors is forcing superior levels of government—in our case, the federated units—to reconsider their own paradiplomatic strategies and action, especially in light of recent trends of urban paradiplomacy. The following are examples of this trend:

- public and private urban paradiplomacy is increasing its international involvement in scope ("high politics" and "low politics") and relationships;
- cities are starting to interact in international matters directly with the federal government and, thus, to bypass federated authorities (e.g., the Canadian Federal Agency cooperates directly with Canadian cities in order to encourage and help them in their involvement with "North-South" cooperation);
- strategic cities alliances and networks are creating a paradiplomatic tissue parallel to the ones established by sovereign and federated units;
- regional (economic) international integration (Europe 1992—Canada-U.S. free trade zone) as well as globalization of the economy are limiting sovereign or federated units' roles and perforating national borders, thus, bringing closer transgovernmental and transnational relations between urban actors.

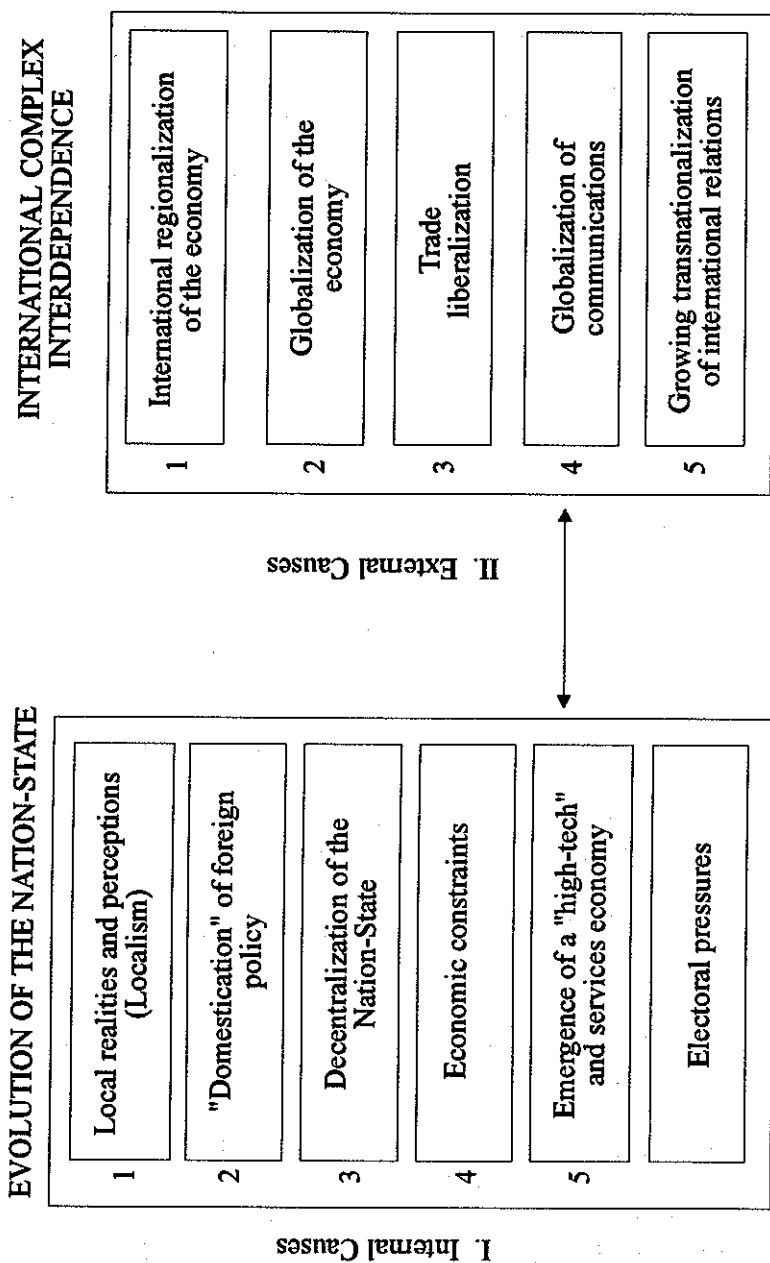
**Table 2.3. *Criteria of a City's International Status***

- 
1. The city has geographically international exposure (border city, port city).
  2. It imports factors of production, such as capital, labor, and services, from abroad and is engaged in economic transactions such as trade.
  3. It hosts foreign and/or international institutions and their representatives (e.g., multinational corporations, foreign banks, consulates, foreign or binational chambers of commerce, foreign trade or tourist offices, and trade commissioners, etc.).
  4. It has firms and other economic institutions abroad.
  5. It has direct transportation links with foreign countries.
  6. It is significantly engaged in social communication activities with foreign countries (e.g., tourism, mail, students exchange, trade missions, etc.).
  7. It has an outward-looking network of support services such as convention halls, exhibition halls, hotel facilities, office parks, research parks, teleports, and professional services.
  8. Its mass media have an international presence and/or audience abroad.
  9. It regularly hosts major international events (e.g., exhibitions, festivals, sports events).
  10. It is the locus of national, regional, or even local institutions with an international scope, reputation, or impact (e.g., international relations clubs and associations, international divisions of local chambers of commerce, foreign universities, international research centers, etc.).
  11. Its public or private institutions have cooperative agreements with foreign or international institutions (e.g., sister-cities agreements, economic cooperation agreements) and are members of international networks.
  12. Its local government has the requisite administrative apparatus to conduct paradiplomacy in a systematic manner.
  13. Its population make-up has an international composition.
- 

Figure 2.3 presents a more complete picture of the determinants of urban paradiplomacy.

### **The Need for a Federated (State or Provincial) Response to Urban Paradiplomacy: Risks and Opportunities**

Urban paradiplomacy could lead to some fragmentation, which explains federated governments' hesitation to encourage urban direct international deployment and even frictions surrounding it. Our theoretical

Figure 2.3. *The Principal Causes of a City's Internationalization*

knowledge and empirical observation of the process of urban internationalization are not conclusive enough to allow us to define all the variables of the relationship between urban international deployment and regional development; therefore, the risk of a decoupling process that leaves a city's hinterland outside the positive reach of urban international deployment is bound to invite a federated unit to an attitude of caution and at times of hostility towards urban paradiplomacy. Being in charge of a balanced and evenly spread development among the various regions of the federal unit, the latter's government has mixed feelings about the emergence and growing socio-economic role of its international cities.

This fear of imbalance in the development of cities and regions is reinforced by the fact that the high-tech and service economy as well as demographic concentration in cities and urban zones could create a risk of new "oligopolistic" situations. The international development of cities could leave their hinterlands and other regions of the country lagging behind.

So federated governments look for policies that ensure that urban paradiplomacy and international deployment do not fragment and disarticulate the economic territory of a state or province.

Urban paradiplomacy calls for new, innovative schemes and processes of roles-sharing, harmonization, and conflict-resolution that avoid cacophonies between federated and urban international deployment and promote common interests. This process of coordination-rationalization is bound to be difficult and long, since urban paradiplomacy is a rather new phenomenon, and therefore difficult to apprehend.

On the other hand, there is a real need for a synergetic approach that links federated and urban paradiplomatic actors, policies, strategies, and actions. Table 2.4 outlines the key elements of a synergetic approach based on a three-fold scheme: (1) institutional, (2) policy, and (3) strategic.

## **FEDERATED PARADIPLMACY: FUTURE OUTLOOK**

### **Strategic Planning in Subnational International Deployment: Building Competitive Advantages**

A systematic study of the history of subnational paradiplomacy in general and federated paradiplomacy in particular reveals the weak spots of such international deployment. Federated paradiplomacy should build more upon previous experiences in order to avoid past ineffective and

**Table 2.4. Synergetic Framework for a More Coherent Federated-Urban Paradiplomacy**

- 
1. Institutional Synergies Need To:
    - a. Establish a federated monitoring/coordinating unit to:
      - monitor urban paradiplomacy;
      - coordinate, at the interdepartmental level, federated paradiplomacy affecting urban international deployment.
    - b. Establish a federated-urban external relations committee, including representatives of the major international cities of the federated unit.
    - c. Second federated and urban civil servants to services (at home and abroad) that deal with external relations.
    - d. Adopt a mixed composition (federated-urban) for certain missions abroad.
    - e. Involve federated and urban leaders and decision makers in evaluation and policy analysis summits.
    - f. Create mixed conflict-resolution panels involving federated and urban representatives.
    - g. Involve representatives of both levels of government in training seminars.
  2. Policy Synergies

Common (federated-urban) reformulation of a number of policies that have an impact on both levels of paradiplomacy, e.g., commercial, regional, immigration, education, fiscal, cultural, investment policies, social policies, transport, tourism, communications, environment, technology, international cooperation.
  3. Strategic Synergies Based On:
    - a. The need to discriminate among cities and to use some of these as the spring-board and locomotive of federated international development (i.e., major international cities);
    - b. The promotion of domestic urban networks of small and medium-size cities able to favor international deployment more successfully;
    - c. The establishment of bilateral international alliances and geographical and functional networks of strategic cities.
- 

Source: P. Soldatos, *Les nouvelles villes internationales*, op. cit.

often erratic actions and develop a strategy of competitive advantage-building based on our strategic hexagon scheme presented in Figure 2.4.

Three of the six pillars of our strategic hexagon appear to have high priority (considering past experiences and future needs): synergies; concentric circles strategy; strategic alliances.

1. Synergism should be developed to remedy the negative effects of vertical and horizontal fragmentation.

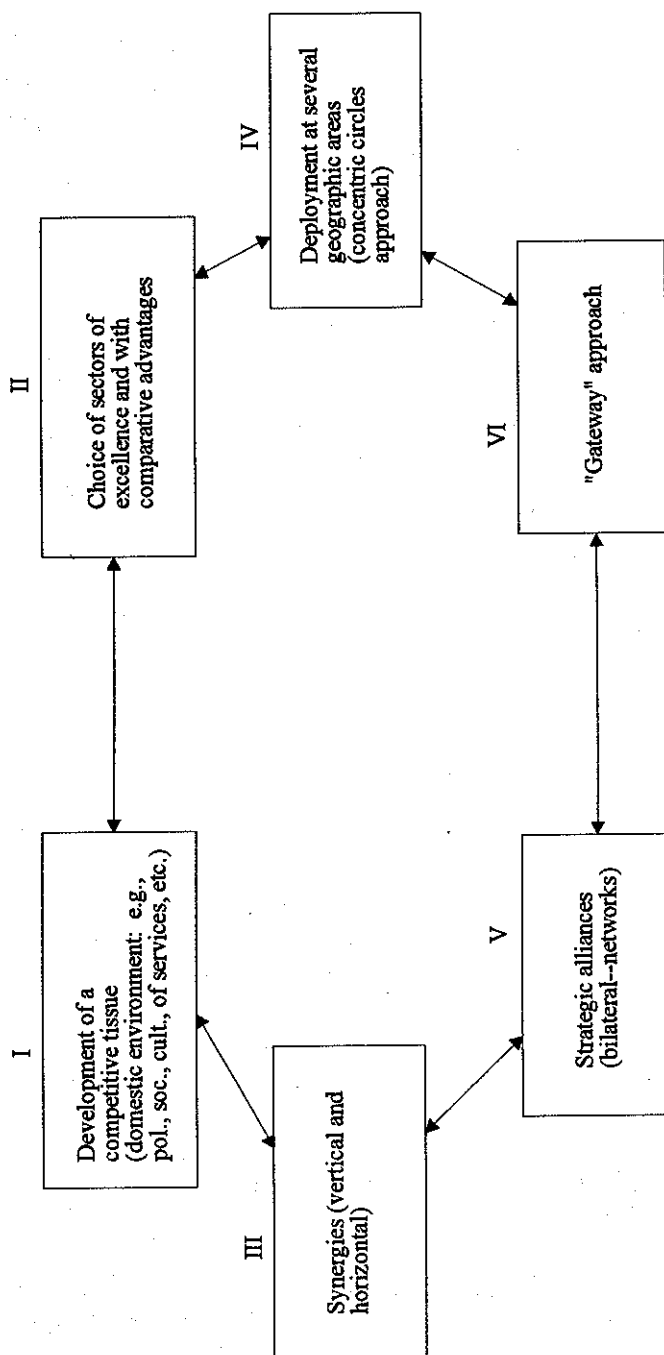
- a. Bottom-up (federated-federal) and bottom-down (federated-urban) vertical synergies would ensure to states and provinces the adequate macro-economic environment, policy coordination and conflict-resolution mechanisms in the realm of external policies and deployment.
  - b. Horizontal synergies among various departments and agencies of a federated unit as well as among its public, private, and scientific institutions would allow for a more coherent, effective, and innovative paradiplomacy.
2. A concentric circles approach is necessary. Quite often, federated paradiplomacy is so compartmentalized it cannot integrate, in a coherent framework, the necessary spatial spheres of its deployment. It is important that a federated unit has a foreign policy strategy that takes into consideration and serves the various spatial realities concerned by such activity, i.e., urban, regional, interregional, state or provincial, interprovincial, transborder, transregional international, continental, and global international.
3. Strategic alliances, both bilateral and multilateral, should be concluded between a federated unit and various international actors such as sovereign states, federated units, cities, and private sector institutions. There could be geographical alliances, based on the rationality of geography, or functional alliances that cover specific areas of activity. There could be framework or umbrella alliances between federated units and actors abroad, and sectorial ones, often seen as a follow-up to a framework agreement (concluded by cities, chambers of commerce, and private institutions).

### **The Evolving Trends of Modern Paradiplomacy: Some Indications**

1. In the sixties the Canadian paradigm of federated paradiplomacy allowed for more emphasis on the domestic causes of such international



Figure 2.4. Building Competitive Advantages: The Strategic Hexagon



Source: P. Soldatos, *Les nouvelles villes internationales*, Aix-en-Provence, SERDECO, 1991.

activity. We now assist with the strengthening of the external determinants of paradiplomacy, namely those stemming from international interdependence.

2. Comparing federated paradiplomacy in Germany and the United States on one hand and in Canada on the other, indicates that the more integrated is the nation-state (FRG, U.S.) the less conflictual is the federated paradiplomacy (i.e., conflict with the nation-state diplomacy).

3. The nation-state, facing a complex interdependent world, is increasingly accepting federated paradiplomacy as an economic imperative and a gesture of political accommodation, even if it could constitutionally oppose it (such opposition, however, is not an easy task, considering constitutional uncertainties in many cases). Thus, federated units would be, more and more, in a position to exercise a kind of functional sovereignty when acting internationally.

4. In a global world dominated by the growing transnationalization of the economy (e.g., the role of the multinational firms and their networks), federated paradiplomacy both reflects and fuels the economic perforation of the nation-state and the progressive obsolescence of national economic borders. Federated units increasingly compete internationally for foreign investment and know-how flows; subnational economies promote links with worldwide functional international networks rather than limit themselves to interaction based on proximity; foreign investment presence, while it could diminish the autonomy of a national economy, is often a positive response to the needs of local economies (e.g., Japanese investment in several U.S. states and cities).

5. Modern cities' international deployment is correlated with federated units' domestic and international attitude and behaviour. Domestic and foreign policy inefficiencies at the level of the federated units promote urban paradiplomacy. But the federated tendency to ensure equal distribution of development factors attracted from abroad (trade, investment, etc.) and, thus, stifle paradiplomacy among major urban actors calls for direct urban deployment abroad. Thus, the need for a new relationship between federated units and cities in the area of external relations is mounting.

6. Following the "too big, too small" idea regarding the nation-state in a process of economic liberalization, deregulation, privatization, and international complex interdependence, federal and federated governments will have to accept the growing international deployment of their cities and develop policies supportive of urban paradiplomacy.

7. Pressures for the elimination of nontariff-barriers (NTBs) in some cases, such as through the Canadian-U.S. Free Trade Agreement, could decrease federal and federated ability to devise actions to support industrial and regional development in favour of their cities internationalization (if such actions are seen as NTBs).

8. Harmony in relations between federated and urban paradiplomacy will not be easy. It will come through innovative methods and machinery of harmonization as well as through a process of partial privatization of such international activities.

9. In the context of a high-tech and service economy with an urban focus, as well as of an urban concentration of cultural infrastructure and activity, parallel city paradiplomacy (i.e., parallel to federated paradiplomacy) will increase within subnational paradiplomacies. Cities will be able, increasingly, to interact directly with the central government on external relations issues, thus bypassing their federated government.

10. The globalization of the economy and communications will increase the degree of geographical discontinuity in the interactions of federated units and will favour the constitution of more worldwide functional networks of subnational actors. Federated units are already very active in the world arena and their paradiplomacy goes increasingly beyond their micro-regional environment (transborder or transregional), reaching out to macro-regional and global spheres of action.

In conclusion, it seems federated units' paradiplomacy in advanced industrial societies is here to stay; more and more, it will take on the aspect of rationalization with less emphasis placed on conflict. It will increasingly be cooperative rather than parallel paradiplomacy; although cooperative, it will continue to pose some problems to the foreign policy of federal governments in terms of global coherence; it will make greater use of transnational channels (see level V, A, in Figure 2.1) in conjunction with transgovernmental channels (including the cities' network of international relations); more and more, it will be nourished by external causes, mainly by interdependence; and more and more, it will develop its own macro-regional range.<sup>19</sup>

## NOTES

<sup>1</sup>See H. J. Michelmann and P. Soldatos, *Federalism and International Relations*, op. cit.; E. Fry, L. H. Radebaugh, and P. Soldatos, eds., *The New International Cities Era*, (Provo: Brigham Young University, 1989); P. Soldatos, *Les nouvelles villes internationales: profil et planification stratégique*, (Aix-en-Provence, SERDECO, 1991).

<sup>2</sup>Segmentation in foreign policy is more pronounced in such societies, since political and socio-economic pluralism introduces a wide-ranging spectrum of actors. However, we witness segmentation phenomena in other types of societies, such as the socialist countries (there, however, foreign policy segmentation is, sometimes, "tactical," i.e., a paradiplomacy without yet real autonomy—e.g., in the former Soviet Union, China, etc.).

<sup>3</sup>We introduced, a few years ago, the concept of *paradiplomacy* as a substitute for I. Duchacek's "microdiplomacy" (see, for example, his study "The International Dimension of Subnational Self-Government," in *Publius*, 1984, no. 4:5-312); however, in his contribution to H. J. Michelmann and P. Soldatos, *op. cit.*, he accepts and uses the concept "paradiplomacy." J. Kincaid, on the contrary, prefers the concept *constituent diplomacy*, referring to federated paradiplomacy. (See his contribution "Constituent Diplomacy in Federal Policies and the Nation-State" in J. Michelmann and P. Soldatos, *op. cit.*, 55-75.)

<sup>4</sup>E. Fry, *The International Relations of Subnational Governments: Coping with the "Many Voices" Phenomenon in International Relations*, paper, IPSA, Corfu, 1980.

<sup>5</sup>On this issue and the conceptual debate, see P. Soldatos, "La théorie de la politique étrangère et sa pertinence pour l'étude des relations extérieures des Communautés européennes," in *Études internationales*, 1978, no. 1 (special issue), 7-42 and the references given to the specialized literature.

<sup>6</sup>Part of this figure was inspired by E. Fry's typology, in *op. cit.*

<sup>7</sup>E. and L. Feldman, "The Impact of Federalism on the Organization of Canadian Foreign Policy," in *Publius*, 1984, no. 4:34.

<sup>8</sup>R. O. Keohane and J. S. Nye, "Transgovernmental Relations and International Organization," in *World Politics*, Oct. 1974, 41.

<sup>9</sup>"The Future World Disorder," in *Foreign Policy*, Summer 1977.

<sup>10</sup>For a more systematic analysis of the determinants of federated paradiplomacy, see P. Soldatos, "An Explanatory Framework for the Study of Federated States as Foreign Policy Actors," in H. J. Michelmann and P. Soldatos, *op. cit.*, 34-53.

<sup>11</sup>K. Ohmae, "The Global Logic of Strategic Alliances," in *Harvard Business Review*, March-April 1984.

<sup>12</sup>J. Rosenau, "Patterned Chaos in Global Life: Structure and Process in the Two Worlds of World Politics," in *International Political Science Review*, 1988, no. 4, 328.

<sup>13</sup>See data in E. H. Fry's, J. Kline's and P. Morici's chapters in this book.

<sup>14</sup>Duchacek, *loc. cit.*, uses the concept of protodiplomacy in order to emphasize Quebec's paradigm in international relations.

<sup>15</sup>*Le Québec dans le monde ou le défi de l'interdépendance*, Gouvernement du Québec, 1985.

<sup>16</sup>On Quebec's paradiplomacy in the eighties, see P. Soldatos, "Les relations internationales du Québec: la marque d'un déterminisme économique," in D. Monière, éd., *L'année politique au Québec, 1987-1988*, Montréal, Québec-Amérique, 1989, and "Les relations internationales du Québec: une paradiplomacie à géométrie variable," *ibid.*, 1988-1989, Montréal, Québec-Amérique, 1990.

<sup>17</sup>See: P. Soldatos in E. H. Fry, L. H. Radebaugh, and P. Soldatos, eds., *The New International Cities Era*, *op. cit.*; P. Soldatos, *Les nouvelles villes internationales*, *op. cit.*

<sup>18</sup>On the concept of *directional cities*, see S. Conti and G. Spriano, *Urban Structures, Technological Innovation and International Metropolitan Networks*, Torino, 1989, Giovanni Agnelli Foundation, 1989.

<sup>19</sup>P. Soldatos, in H. J. Michelmann and P. Soldatos, eds., *loc. cit.*, 51.

# *International Economic Policies and the State Role in U.S. Federalism: A Process Revolution?*

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## CHALLENGING THE CONCEPT OF THE NATION-STATE

A pervasive development in international economic relations during recent years has been the changing material context of the "sovereignty" of nation-states in the global system. As technological change has accelerated, along with the globalization of business enterprise and the dramatic geographic shifts of resource extraction, processing, and distribution in the world economy, both the traditional political authority and the underlying economic structure of the nation-state have been subjected to unprecedented new pressures.<sup>1</sup> The key structural element in the successive waves of technological and organizational changes of the last 15 years has been the emergence of the multinational corporations (MNCs), also termed transnational enterprises (TNEs), dominating resource control, enterprise, and services in vital sectors of both national economies and world trade. Consequently—with the intensified internationalization of research, financial systems, markets, and access to resources and labor supply on the basis of comparative advantage—what seems at times today an almost-obsessive concern with establishing or maintaining "competitiveness" has eroded long-traditional premises and programs of trade and other economic policies, both national and subnational.<sup>2</sup>

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That we now routinely introduce the word "subnational" into discussion of such trends and responses is an indication of one rather unexpected dimension of these changes. For the national governments in the world system—especially in the nations with federal organizations including the United States and Canada—have either by design or default, or both, been witnessing rising consciousness and activity on the part of subnational officials in response to the pressures of new competition and the quest for the new opportunities that globalization and technology may offer. In this sense, the initiatives of the subnational governments are complementary to the tendencies toward international agreements (e.g., on trade, on environment, and on resource exploitation) by which the nation-states have been seeking through collective efforts to harness some of the new forces for economic change.

As indicated both by the record of subnational governments' efforts and by the national governments' own pursuit of regional and other international agreements, the challenges to the nation-states have raised important questions regarding their real competency—that is, concerning the sufficiency of the powers of national governments, today, for the maintenance of effective authority and control over their economies and especially the internationalized sectors within those economies.<sup>3</sup>

The entire range of economic transactions that traditionally has been subject to governmental regulation as an incident of national sovereignty now appears in a much different light than, say, even as late as in the 1960s. Private congeries of enterprises in the international economy have now extended their economic power (and, by extension, their political power), as has been widely recognized, in significant ways beyond the effective jurisdictional ambit of the nation-states within and among which they operate—including the nations in which they are nominally domiciled.<sup>4</sup>

Meanwhile, the new biotechnical and medical advances, including bioengineering and esoteric pharmacological innovations, have introduced into international trade products that represent entirely new problems for national regulatory regimes. In many instances, these new products carry the potential for environmental degradation or health challenges of types that existing national regulations are unprepared to handle. Because the MNCs—and the innovative venture-capital firms that MNCs typically buy up once they are prepared to enter international markets with their new high-tech products—control the greatest part of the new technologies, the resultant challenge to effective sovereign controls is all the more powerful.<sup>5</sup>

Another focus of attention in recent analysis of nation-state policies and the effectiveness of "sovereignty," has to do with whether common resources can be rationally developed (as in the deep seabed), or spillover pollution problems effectively addressed (as with global warming, or "global change"), without the surrender in essential ways of elements of traditional sovereignty, involving painfully difficult but perhaps essential political choices. Two decades ago, one of the first studies to bring the challenge of the multinational corporation to wide attention, by Raymond Vernon, bore the title *Sovereignty at Bay*; its analysis was organized around precisely these questions of attenuated power of the nation-state in relation to the new giant international firms. And in the same vein, the debate of the 1970s and 1980s on mechanisms for international development of ocean seabed resources and for the protection of the marine environment against continued assaults by pollution had as its central theme the notion of the ocean as "the common heritage" of humankind—a heritage not properly subject to appropriation and claims of exclusive ownership, requiring international agreements that would explicitly renounce some of the claims of sovereignty that have been at the center of that concept in international law since its remote doctrinal origins.<sup>6</sup> Again, however, subnational authorities in the U.S. have entered lately into the debate by seeking to extend the degree of their own control over coastal and offshore resources—both as to exploitation and as to conservation.<sup>7</sup>

We are reminded of how even the most traditional trade relationships and products can be affected by the oft-cited example of how the agricultural commissioner of Texas, the American and European "biotech" manufacturers, and the meatpacking companies all became embroiled in a controversy over the European Community's economic policy of barriers against the shipment of hormone-fed beef to the continental market—a market that had been supplied continuously, and on a large scale, by the American farm sector for more than a century. That the state government of Texas became a prominent actor in that scenario, just as it did in another important arena of international commodity production and trade with regard to the international oil cartel OPEC's operations, has frequently been cited as signalling a new—and potentially transforming—feature of the political landscape, and especially the foreign policy process.<sup>8</sup>

This attention to the role of the state and provincial governments, the common theme of the scholarly studies presented in this volume, casts a light upon the significance of subnational governments' activism—the



functions of the constituent government as an actor with increasingly salient roles not only in the formulation and implementation of policies and programs that are specifically addressed to matters of foreign economic policy, but also (as Professor Kline makes clear) in the exercise of state influence ("clout") in the political process by which national foreign economic policies are shaped.<sup>9</sup> John Kincaid, in a perceptive essay that provides an overview of the states and foreign policy in the United States system, has written that national governments in the face of imperative pressures including the revolution in world economic relations, have perforce been engaged in divesting certain elements of their "sovereign prerogatives to varieties of multinational regimes." At the same time, Kincaid shows, they have also been under the necessity of ceding elements of their prerogatives to the constituent governments within their own national systems.<sup>10</sup> Perhaps on further consideration, one might conclude that the Kincaid thesis should be expanded to take fuller account of both these tendencies as they relate to the sometimes unwitting or passive cession of elements of authority to *nongovernmental* actors, i.e., in the private sector—not least important, to the giant multinationals. Especially so given the seemingly dominant deference to the forces of "free" markets and given enthusiasm for disengagement of government and for deregulation—an enthusiasm and deference not absent, one may note, by any means in the leadership of the former socialist bloc nations or among the Yeltsin faction in the now-unstable congeries of Soviet republics.<sup>11</sup>

The proliferation of state roles and initiatives in the arena of foreign economic policy, prominently including trade policy, is undeniable. Whether proliferation and visibility reflect controlling importance, however, is another matter, treated further below. Against the background of the foregoing brief discussion of new forces that are challenging traditional sovereignty, I shall first seek to appraise several dimensions of the new state-level activism in foreign economic relations.

### STATE-LEVEL ACTIVISM IN FOREIGN ECONOMIC RELATIONS

At a minimum, I think, three distinctive clusters of data need to be examined—three perspectives employed—in undertaking any appraisal of how significant for U.S. federalism and its operations (or expanded) state activism in the foreign policy arena may be.

First is the perspective that we may gain from history—evidence from the record of the system in operation in earlier eras, prior to the advent of the modern technological, economic, and trade revolutions that have had a transforming influence on nation-states in the world economy.

Second is the contemporary perspective on range and variety of the specific subnational policy innovations that indicate the depth of emerging changes in the states' international role.

Third is the perspective from law: a look at constitutional doctrine as one indicator of potential areas for further development and growth of subnational governmental action or, alternatively, as an indicator of possible constraints and limits on such development in the future. These categories of inquiry are not meant by any means to be comprehensive, nor are they self-contained and discrete, but they constitute perhaps a useful starting point for the type of inquiries that the chapters in this volume seek to pursue.

### The Perspective from History

First, there is the matter of historic change. How new is this development in fact? And to what extent, if it is new, does it embody qualitative or quantitative changes (or both types) that constitute a shift of real significance in the power relationships or the governing institutions within the system?

Any suggestion that our subject matter might not be historically unique as one might imagine at first blush is suggested by this quotation from a study of the governors' organization and its functions:

A few years ago it would have seemed incongruous—if not wholly inappropriate—for State governors to be concerned officially with foreign affairs. Yet in recent years, delegations of governors have conferred with heads of foreign states in Buenos Aires, Rio, and the Kremlin, while a steady flow of foreign policy resolutions has issued from the Annual Governors' Conferences. . . . These actions . . . notably alter the traditional role of the State executives. In a sense, the addition of this international aspect of the daily concern of governors is merely a reflection of the growing interdependency of all nations in a complex planet.

This striking passage is not from John Kincaid, nor John Kline or others contributing to this volume, who could easily have incorporated such a passage verbatim in their papers. It is, rather, from Glenn Brooks'

famous work on the governors' conferences first published some 30 years ago.<sup>12</sup> It was prominently featured as an inscription, moreover, in the standard, and still invaluable, treatise on intergovernmental relations by W. Brookes Graves published in the mid-sixties.<sup>13</sup>

What distinguishes Brooks' analysis in 1961 of the phenomena of governors actively pursuing foreign economic policy matters from the typical scholarly analysis of 1991 is his caveat admitting that these actions of the governors, in their conferences and on their manifold jaunts to foreign capitals, "have had only a minor influence in the international scheme of things." By contrast, many analysts portraying the role of the state governments and their leaders today, in the realm of foreign affairs and especially economic and trade policy, make the case for truly "major" influence "in the international scheme of things." How well warranted this latter claim may be is a question considered in other contexts below; but it needs to be considered much more fully on another occasion.

For now, my concern is with a larger picture of historic relationships within federalism on matters of state policy. Taking the long view from the early nineteenth century, one can identify three very prominent areas of continuity—three constants—in the history of American federalism, law, and economic development. The first was the persistence with which the legal and governmental system remained—even with centralizing trends in many areas of policy—a rich and elaborate mosaic of economic policy and of economic interests. Each state has had its own peculiar and changing "mix" of taxation, corporation, labor, natural-resource, and regulatory policies. Distinctive economic interests have been dominant at different times, in the nation's regions and in individual states. Consequently, there has been much room for the pursuit of these interests through the medium of state governmental authority—though of course constrained by the evolving interpretation of such constitutional limitations as those embodied in the Contract and Commerce clauses, and by the sometimes dramatic preemption of regulatory control through national legislation, as occurred beginning with the Interstate Commerce Act (1887), and was expanded with the Federal Reserve Act (1913), and the vast array of preempting measures in the New Deal era and the 1960s and 1970s.<sup>14</sup>

Federalism, in sum, has provided consistently a receptive structure for expressions of state autonomy and the pursuit of state-oriented economic objectives. As a working system, United States federalism—even in the modern era of increasing control by the national government over economic affairs—has left enormous room for intervention by the states with

respect to economic institutions and policies.<sup>15</sup> In that very important sense, the reach of state promotional activity directly into the realm of promoting foreign trade opportunities, establishing favorable terms for foreign investment within the U.S.A., keying educational innovations and spending to trade-related and production-related needs, and the like, all stand within a long and robust tradition.<sup>16</sup>

The second characteristic of this tradition—comprising another continuous theme in the record of state government activism—is keen and unremitting competitiveness among the states. Throughout the nineteenth century, with a remarkable carryover in state policies in the modern era, there was rivalistic state mercantilism—a struggle for advantage, mobilizing state governments' authority and resources, premised on the notion of a zero-sum game in which failure to capture immigrants, investment capital, entrepreneurial attention, and trade opportunities meant loss to competing states. The confrontation of this robust mercantilism with the realities of comparative advantage (and disadvantage) is one of the abiding elements of the American system of governance throughout the republic's history.<sup>17</sup>

Here again, though carrying the effort to the arena of foreign affairs represents a departure of significance, there are some precedents and continuities. A particularly quaint (and ancient) early example of such effort—especially in light of the prominent role of Maryland and Virginia in the avid pursuit of European markets in the 1800s and 1890s through their joint (and also separate) trade offices on the Continent—was the innovative role of Maryland and Virginia authorities in the golden age of Tidewater tobacco culture, in the late eighteenth century, even before the Revolution, when the two provinces vied with one another through tobacco inspection, compulsory warehousing, and even direct marketing quotas and regulation, to compete effectively for the European market for the weed.<sup>18</sup>

The third continuous theme in the history of subnational government action pertains to the shifting role of the national authority. This was related to the problem of congruence—to making policy effective by relying on a governmental authority that had jurisdictional range sufficient to the task. When state jurisdictional lines became manifestly "incongruent" with the dimensions of the market or industry to be regulated, a resort to national rules and minimum standards imposed from above was the only way to obtain effective action. To a somewhat lesser extent, the same was true of promotional action: to be effective, it often needed to be national in conception, operational scope, and financ-

ing—for example, as with the transcontinental railroads or the development of an effective modern highway program. State competitiveness involved advantage often not from natural resources or situation but from a willingness to adopt "beggar-they-neighbor" policy strategies, with serious consequences for social welfare.<sup>19</sup>

Until the feckless rush to deregulation that began in the late 1970s, then blossomed and luxuriated during the Reagan years of the 1980s, and in the 1990s produced monumental fiscal and structural problems for the United States, the steady and continuous tendency in American policy beginning in the 1850s was a shift from the periphery to the center—a shift in the locus of authority and power from the states to the national government, as one area of policy concern after another appeared to be intractable except if action were taken from Washington.<sup>20</sup> And even in the Reagan-Bush era, when the overriding objectives of minimalism and free-market goals come into play, the values of federalism *per se* are cast aside without a moment's hesitation—for example, to preempt state power and by edict from the center impose lower standards of regulation in key areas such as medical appliance market, or to take up the cause of federal preemption of the entire field of industrial liability to consumers.<sup>21</sup>

In this third dimension, involving the shift to powerfully centralized government, the apparently heightened activism and salience of the state governments with regard to foreign policy may indeed constitute a departure from historical trend.<sup>22</sup> Perhaps the apparent willingness of the national government, dating from the late 1970s or even earlier, to give the state governments a broad discretion in pursuing markets, direct investment, joint venture capital, and other goods in the international market should be interpreted as an "imperative" associated with the modern international economic order, transformed since the 1960s. Or perhaps, instead, the discretion allowed the state governments is an integral part of a larger strategy of giving play to competition—embracing not only the policy of permitting the states to go on granting tax exemptions and similar subsidies, and to offer special export loan subsidies, but also embracing a permissiveness regarding the states' arrangements such as the in-bond offshore plants (the *maquiladoras*) on the Mexican border, highly controversial for their environmental side-effects and also their impact on the welfare of the U.S. worker in border areas and in the nation at large.<sup>23</sup>

In any event, it is only in regard to the third aspect of federalism and state economic policy—the decentralization or divesting side of the new state role in foreign economic and trade policy—that there is possibly a

noteworthy departure from traditional patterns. The variety and diversity, and also the competitiveness, of the states in their economic policy role, is entirely consistent with the historic tendencies.

### **The Contemporary Perspective: the Scope and Significance of State Policies**

Other contributors to this volume undertake overviews of the types of state and provincial policies that are now in effect in both Canada and the United States.<sup>24</sup> Without proposing to go over the entire ground here, I do want to venture two sets of comments on these policies and their impact.

The first concerns money as a measure of effort. The official data for Fiscal Year 1988 show that 33 U.S. state governments expended \$54.7 million—an average of \$1.66 million per state—on the various agencies and initiatives directly associated with promotion of foreign trade.<sup>25</sup> It may be conceded that expenditures are not the only, nor even necessarily the best, measure of importance and impact. Nonetheless, the hard fact is that this sum of U.S. \$54.7 million is only a fraction of what a medium-sized Canadian or American city will spend on bureaucratic salaries for management; and the average U.S. \$1.66 million spending per state, among these 33 is hardly larger than the amount that an American state university will routinely appropriate to a major research center or institute (for example, the Institute of Governmental Studies at UC Berkeley, our conference site for the papers in this volume).

Apart from such expenditures being only a minuscule proportion of total state and local spending, they also reveal enormous state-to-state variation in the level of effort represented. Thus, California alone was responsible for some 18 percent of the total; and in funding of activities for promotion of foreign trade, three states (New Jersey, New York, and California) accounted for one-third the total expenditures. From a different angle of vision, it may be noted that New York—which accounted in 1989 for 7.7 percent of the nation's total exports—in what its governor trumpeted as being "a dramatic new economic development effort" for promotion of exports, backed up the enthusiastic rhetoric with what the business press termed "an anemic appropriation of [U.S.] \$1.8 million."<sup>26</sup> Some states make do with much less. New Hampshire, for example, budgeted exactly \$7,000 for overseas trade promotion in 1990!<sup>27</sup>

One may wonder, in light of these numbers, whether some scholars have been swept along by enthusiasm sometimes bordering on euphoria about a development in American federalism that is much less than the fundamental reallocation of governmental responsibilities and locus of policymaking than some of the rhetoric suggests. Without question, when governors and their trade delegations "open doors" for business firms, it can have important effects without showing much of a dent in the state budget. Without question, too, "grass roots" arguments have merit: political leaders and administrators close to the ground often have a more intimate and useful knowledge of business firms, resources, and possibilities—but also recalling the selectiveness that is involved in programs that expert analysts find typically serve "only 1 percent or fewer of the state's business in a given year"—than remote bureaucracies in Washington or overseas, even when federal agencies maintain field offices in domestic economic centers.<sup>28</sup> Perhaps the best argument of all, in support of the idea that the small sums being expended on trade promotion can have enormous payoffs, is an argument based on their exceptional flexibility and capacity to focus on delimited and realistic policy goals.<sup>29</sup> There is ample evidence, in fact, that many of the state, regional, and local development efforts today tend to focus on carefully defined export or direct-investment strategies, targeted for particular markets or to aid particular industries, and are expertly designed to take maximum advantage of the federal government's financial, consular, and export-assistance programs, such as they are, to advance limited policy objectives.<sup>30</sup>

A more realistic view, however, will suggest some serious caveats about the alleged decentralizing of trade policy and rise of state activities to a new prominence. I will suggest some particularly troubling ones that come to mind.

First, the private sector—to be sure, often aided by tax exemptions, urban development grants to aid in financing construction of facilities, and the like—dwarfs the state and local governments in providing infrastructure and coordination of foreign trade promotion. New York's World Trade Center, for example, has 12 million square feet of office space, housing more than a thousand companies, which employ 50,000 persons. Operating on a franchise basis, the World Trade Center Association has moved toward the creation of comparable facilities, of varying magnitudes, for Detroit and other cities.<sup>31</sup>

Second, the preponderance of the most ambitious and effective initiatives in state-local promotion of foreign trade and of direct investment from overseas represents small adjustments and extensions of

existing programs of long standing. Thus it has been the established local and regional development authorities—with their powers of granting extraordinary exemptions and subsidies in foreign as well as domestic firms—that have taken the lead with respect to direct investment. And even with regard to foreign exports promotion, the more dramatic initiatives (special subsidy grants, for example, to export-oriented firms seeking to tap new markets overseas) have been produced, as it were, from legislative molds and casts that for nearly two centuries have been turning out targeted subsidies of one kind or another for favored industries in most U.S. states.<sup>32</sup>

Third, analysis of the new state economic initiatives has tended to ignore the "cost" side of the ledger when the states and local governments pull out all the stops to attract foreign enterprise or to penetrate new overseas markets by means that can do serious damage to their social programs and other governmental services, or that sacrifice standards of environmental protection as an instrument for attracting investment and lowering costs of production for exports. The euphoric view, mirroring the rhetoric of the governors and development experts, tends to dwell only upon the benefits of active promotion. It is not enough to recognize, as Blaire Liner of the Urban Institute has recently written, with regard to the history since 1973 of southern states' promotional efforts, that "the southerners had been pioneers in attracting firms from northern and western states, . . . and, in many ways, this idea of going overseas seemed to be a natural extension of their current industrial attraction program."<sup>33</sup> The analysis has to be taken one step further, to remind ourselves of the kinds of priorities in public spending, ordering of labor relations, and social programs that such competitive development programs all too often have involved for the communities and states that initiated them so in the "booster" spirit.

If the president of Federal Reserve Bank of Boston is right, as I think he is, in his remark that state and local trade initiatives have to be assessed against "the plain, unvarnished truth . . . that 90 per cent of what a state can do [to promote its exports] is to provide a good business climate," then we are brought back to the question that has bedeviled efforts to evaluate state-local development policies as long as they have existed: what is the appropriate content of a "good business climate," and how much in the way of wage scales and benefits, tax revenues, and environmental protection should be bargained away in a Faustian deal that is designed to push the local economy in one direction or another, responding to the imperatives of globalization and "competitiveness"?<sup>34</sup>



Will foreign-trade promotion resolve itself, in practical terms, into yet another excuse for the techniques of "beggar thy neighbor"—to give additional impetus to a "race to the bottom," a phenomenon all too familiar to students of American federalism from the experience of earlier eras of U.S. history?

We already have had a glimpse of what kinds of ill effects can flow from well-intended, or at least elaborately rationalized, state promotional efforts in the California-Mexico and Texas-Mexico maquiladora factories that have become an environmental blight for Mexican communities—with significant physical spillover to U.S. lands and coastal waters—in a vast area of the southwestern border. An additional irony of the maquiladora story is that to a large extent the U.S. agreement with Mexico had permitted multinational firms, particularly the big Japanese conglomerates, to take advantage of lax pollution controls, low wages, and in these new privileged factory districts to reach the U.S. market with their goods at prices with which plants in locations (and labor forces) north of the border cannot hope to compete.<sup>35</sup>

Fourth, there is perhaps an unwarranted excess of optimism among commentators on subnational diplomacy about intermunicipal, regional, and (across the Canada-U.S. boundary) state-provincial cooperation as a stabilizing element in what might otherwise be an intensifying of the "jostling, often cutthroat trade competition that has marked relations among the states for most of their history."<sup>36</sup> In fact, the competitive tradition of state mercantilism is alive and well in the 1990s. Apart from the changes in individual states' policies on trade promotion that result from changing election patterns, making consistent coordination difficult, there is an interesting pattern of municipalities and states (including state-provincial efforts at unified trade efforts) first coming together to cooperate, then soon undermining the facade of unity as they angle for their own particularistic interests. One recent example is the Mid-South Trade Council, a consortium of six states founded in 1983 that has failed to establish an office or hire staff because of concern in each member state's capitol that "sharing information will mean the loss of some individual competitive edge."<sup>37</sup> With slightly better results, the Council of Great Lakes Governors moved in 1989 to establish a regional office in Canada for the promotion of their states' trade and tourism. One of the member states, however, almost simultaneously initiated the organization of its own office in Canada, with a focus on joint ventures and return investment. "I think it's hard for states not to feel competitive with each other," a state official explained, "when it comes to reverse investment."<sup>38</sup>

It is a commonplace occurrence in federal systems that "it's hard for states not to feel competitive with each other" on a great range of matters that impinge vitally on the climate of business, the quality of living, and the protection of the physical environment and the style of resource use and exploitation. If I am correct in arguing that the complex mix of basic policies of the states and substate governmental units concerning these vital matters will be more determinative than governors' junkets and "treaties" with foreign nations seeking to make hitherto-neglected inland cities on nearly dry creeks "great entrepôts" of trade for China or Peru or Costa Rica, and the like, then the paltry expenditures on trade promotion fade into a very obscure background indeed. Other questions of social costs and benefits would then take a much more central place in the forefront of analysis and evaluation.<sup>39</sup>

The relative significance of the highly focused efforts to promote foreign trade and to attract investment must be weighed, moreover, against the full range of state and municipal or regional policies that have an impact on comparative advantage in international economic relations. Although many of these elements of policy are discussed in other essays in this volume, it is worth recalling here how wide of scope and considerable in their impact are many of them. A summary listing of the laws and administrative efforts of the state governments and other subnational units with such impact would need to include at least the following: taxation rules, including the vexed area of unitary taxation with special significance for multinational corporations; corporate takeover legislation; plant-closing laws, restricting in various ways the freedom of factory owners to terminate operations and lay off labor force; labor relations policies more generally, especially with regard to state "right to work" laws and other legislation that constrains the processes of organizing workers and of the unions' exercise of economic leverage in labor-management disputes; state laws concerning R&D development, pooling of efforts, and technology transfer; policies establishing the terms of resource extraction (forests, offshore minerals and fisheries, mining exploration and extraction, etc.); governmental procurement preferences and barriers to purchasing from foreign suppliers; and, not least, the enormous range of health and environmental regulations that are one of the most important areas of difference in the policy mixes of the American states in our day.<sup>40</sup> No effort to provide analysis of the states as actors in the international economic relations among nations, and concerning the operation of MNCs within the international economic arena today, will stand up well without taking full account of such vital

policies as they affect patterns of trade, investment, employment, and, withal, economic power. Moreover these elements of policy remain, I would submit, of far greater significance than the phenomenon—or, more properly, the epiphenomenon—that is variously termed "paradiplomacy" or "subnational diplomacy," conducted by the states and substate units in their efforts to promote or to order trade and investment. Scholars ought to regard with a healthy dose of skepticism the more extravagant estimates of how path-breaking and important are the subnational initiatives of recent years.

### The Perspective from Law

In numerous areas of U.S. constitutional law bearing on federalism, there are today some serious questions about the boundaries separating state from national authority. In some instances, the law has been unsteady and uncertain, while in others the sea change in the national political climate and the new conservative Republican dominance of the Supreme Court suggest the likelihood of new doctrines gaining authority. Hence there is some doubt about the future course of the law on even such basic matters as the Tenth Amendment's limits on the congressional police power (a vexed question since the mid-1970s), or the proper limits of federal courts' review of state law-enforcement practices and of state judicial decisions on civil liberties.<sup>41</sup> No such doubt pertains, however, as to the foreign-affairs power of the national government as being supreme over any claims that the states may have. Not since some doctrinal moves were made by the Taney Court in the pre-Civil War years in the direction of states' rights regarding foreign affairs—in decisions long since repudiated by the modern Court—has the authority of the states *vis-à-vis* foreign relations been viewed in American constitutional law as an inherent power.<sup>42</sup> Insofar as the states act, it is because they are *permitted* to do so; it is a strikingly clear example of "permissive federalism," or "federalism by sufferance." Insofar as the states have been permitted to undertake initiatives on their own—as in the recent initiatives in foreign economic "diplomacy" that have captured the fancy of enthusiasts for paradiplomacy or "intermestic relations"—it is in a legal framework in which the national government retains final authority. The states have been free to pursue their policies in this arena because both the executive and Congress, as Kincaid has written, have proven "largely tolerant and benignly cooperative, neither interfering in

other ways with state and local initiatives nor going out of [their] way to lend a helping hand."<sup>43</sup>

A curtain could be dropped almost instantaneously, however, on the entire scenario of state initiatives and "paradiplomacy," if the attitude of the national authorities changed suddenly. And while such a wholesale reversal of attitude is unlikely, given current political realities, still the national government—either through legislation or executive agreements and treaties—not only retains the authority but could well actually exercise it in the not-distant future, to preempt important areas of state economic policy bearing on comparative advantage in economic relations. This is so, I think, especially with regard to environmental policy, "Buy American" and other preferential purchasing policies, and industrial liability—policies that surely are close to the core of the states' claims to autonomy in ordering their economic relations.<sup>44</sup> As I shall argue below, the possibility (or likelihood) of such preemptive action from Washington threatens to attenuate the states' control over their economic destinies in ways that can vastly outweigh the increased degree of control that they may have gained through the permissive federalism allowing them to engage in various kinds of subnational economic diplomacy.

Constitutional doctrine in this area of American law is strongly founded on a series of decisions favoring discretion in the national government, and particularly in the executive branch.<sup>45</sup> In a decision of 1936 much debated and criticized, but still acknowledged nonetheless as the source of current doctrine, *United States v. Curtiss Wright Export Corporation* (299 U.S. 304), the Supreme Court declared that the power to conduct foreign relations stood apart from other powers as to its source and scope. It was an inherent attribute of sovereignty, Justice Sutherland's famous opinion declared for a nearly unanimous Court, "in origin and essential character different from that over internal affairs," passed from the Crown directly to the new national government rather than being based (as domestic powers were) in the Constitution or its ratification processes.<sup>46</sup>

Another decision of the Court, *United States v. Belmont* (301 U.S. 330), in 1937, gave additional force and scope to the doctrine in the *Curtiss-Wright* decision by its holding that an executive agreement concluded with a foreign nation should be accorded the same standing in constitutional law as a treaty—which is to say, it would supersede state laws in conflict, under terms of the Supremacy Clause that covered international treaties, so that "in certain cases a president's will could replace state law."<sup>47</sup>

The significance of these decisions was further reinforced by two earlier decisions of the Supreme Court. The first was in the 1890 case of *Geofroy v. Riggs* (133 U.S. 258), in which the Court had removed virtually all limits upon the extent of substantive issues that might be affected in making diplomatic commitments. The *Riggs* Court was not concerned to read any limitations on the scope of executive agreements or treaties from theories of state *versus* national authority, such as it was accustomed to defining in "federalist" analysis of the Commerce Clause, Tenth Amendment, or Contract Clause in matters regarding domestic legislation. Instead, it found that "the treaty-making power in the United States extends to all proper subjects of negotiation between our government and the governments of foreign nations"; and in specifying exceptions—those matters that were beyond the realm of "proper subjects" of treaties—it could name only surrender of republican forms of government and the cession of physical territories of particular states.<sup>48</sup>

The other major decision of great force—in a line that had begun with *Ware v. Hylton*, in the Republic's earliest years, upholding the supremacy of treaty obligations to state law, and running down to *Curtiss-Wright* some 140 years later—was in the famous 1920 case of *Missouri v. Holland* (252 U.S. 416). This decision upheld the constitutionality of a congressional statute for protection of migratory birds, enacted to implement a treaty on this subject with Canada approved in 1915.<sup>49</sup> Many authorities had found earlier that national regulation of taking or traffic in migratory birds was beyond the legitimate powers of Congress under the enumerated-powers doctrine. Indeed, two lower federal courts had declared an earlier congressional statute on this subject to be unconstitutional. Those decisions, in turn, had prompted congressional leaders to seek the treaty with Canada specifically to place legislation on a treaty-power foundation and thus to circumvent constitutional objections founded on considerations of federalism.<sup>50</sup>

Speaking for the Court in *Missouri v. Holland*, Justice Holmes set aside the entire question of state-national boundaries under doctrines of federalism, declaring that the power to conduct foreign relations and make agreements on "matters of the sharpest exigency for the national well-being" must be given full play. Even if the Constitution did not clearly authorize Congress to deal with such exigencies, Holmes declared, once a treaty had been concluded and ratified, congressional authority to act proceeded on an entirely different ground and therefore a constitutionally legitimate one.<sup>51</sup>

The line of analysis in *Missouri v. Holland* and *Curtiss-Wright*, which stressed inherent powers of sovereignty in regard to foreign relations, received further doctrinal support from the Supreme Court after World War II. In *United States v. California* (332 U.S. 19), a case in 1947 concerning national ownership and control of the states' offshore waters, the Court's majority upheld the authority of the nation over the states, asserting the "paramount" authority of a sovereign over waters beyond the coast. Such waters, Justice Black stated, were within the subject matter of questions "upon which the nation may enter into and assume treaty or similar international obligations," hence must be treated as beyond the reach of state authority when national claims intervened.<sup>52</sup> Moreover, in recent cases regarding state regulatory and tax policies affecting commercial relations with foreign nations, the federal courts have tended to demand a standard of uniformity based on the idea that this nation must "speak with one voice" in this area of law.<sup>53</sup>

Champions of the new state "paradiplomacy" have engaged in some rhapsodic—if not to say quixotic—celebration of one Supreme Court decision of 1947 that seemed, at least at first blush, to run against this seemingly irresistible trend in judicial interpretation. The case in question was *Clark v. Allen* (331 U.S. 503). Here the Court was asked to rule on the constitutionality of a California statute that was similar to many so-called "Cold War laws" of the post-1945 years. By these laws, many state legislatures sought to prevent the distribution of property, especially through inheritance, to persons in Communist nations that did not grant reciprocal rights of inheritance or ownership to American citizens.<sup>54</sup> The Court upheld California's inheritance statute, finding that there was no infringement by the state upon the national government's exclusive authority in the foreign-affairs realm.

What enthusiasts for paradiplomacy usually fail to mention, when they invoke *Clark v. Allen* as the fountain of judicial wisdom on this issue, is that the decision turned mainly not on considerations of federalism—though the Court did, to be sure, mention the need to prevent state authority being "thrown into the utmost uncertainty and confusion"—but rather upon the degree to which state action affected foreign relations. The state had only "incidental or indirect effect" upon foreign countries, the Court found, hence the statute was permissible. The decision took specific notice of a different hypothetical situation, in which there was evidence of "an overriding federal policy, as where a treaty makes different or conflicting arrangements." In such a case, the Court ruled, "the state policy must give way."<sup>55</sup>

To the dismay of those who follow Michael Shuman and other zealous proponents of state paradiplomacy today, in their quest to find durable constitutional (rather than merely political) underpinnings for state and local initiatives, the Court reconsidered the Iron Curtain inheritance statutes, with different results, in the 1968 case of *Zschernig v. Miller* (389 U.S.429).<sup>56</sup> The Court in this case struck down as unconstitutional an Oregon statute regulating escheat and barring inheritance by East Germans in absence of reciprocal rights for citizens of Oregon. The Court's plurality pointed to the specific rationales invoked by Oregon's state courts in regard to this law, finding that the Oregon judges were concerned with "thawing of the 'cold war'" and other desiderata that were "matters for the Federal Government, not for local probate courts." Despite an *amicus* brief by the U.S. Government that disclaimed any adverse effect on foreign policy and urged upholding of the Oregon statute, the Court found that the statute bore "great potential for disruption or embarrassment" of U.S. foreign relations. The plurality insisted that it was not departing from the standard set down in *Clark v. Allen*. That decision had been addressed to the statute on its face, the plurality remarked, whereas in *Zschernig* the Court was considering the actual application of a similar statute; the results of such consideration had led to the conclusion that the effects on foreign relations were potentially well beyond the category of "incidental or indirect" impact that *Clark* doctrine might have permitted.

Whatever merit may lie in the charge against the *Zschernig* Court that it opened a window for free-wheeling judicial review of every state action impinging even very remotely on the conduct of foreign relations, the fact remains that even the lost and oft-lamented doctrine of *Clark v. Allen* explicitly recognized (as we have seen) that "the state policy must give way" when the national government has taken positive action through a treaty or other instrumentalities, establishing an "overriding federal policy." Hence, there seems little question that as doctrine now stands, the Court will validate any preemption of state authority that Congress deems appropriate—and perhaps will also overturn in many instances important state actions even in the absence of congressional action.<sup>57</sup>

Thus, we do well to concentrate our attention on what impact any positive actions by the national government, defining an overriding policy, are likely to have upon state autonomy within the federal system in the foreseeable future. As the Court's plurality remarked in *Zschernig*, they might approve the validation of state initiatives that were in the category of "diplomatic bagatelle"—a category, I would contend, that

embraces much of the vaunted paradiplomacy that attracts attention today. They said they could not, however, view with similar deference state authority when it had true potential to impinge on the effective and unified pursuit by Washington of its policies in foreign economic relations.

Shuman and those who share his concerns to create a constitutional blanket of protection for the state to maintain maximum opportunities and paradiplomacy were, of course, delighted with the Reagan and Bush administrations' apparent lack of interest in challenging state and local initiatives in the arena of foreign economic relations. Just as they over-emphasize the importance of paradiplomatic innovation (those "bagatelles" of which the Court has spoken) as an element in the overall mix of state economic policies, they also overlook the real danger to state autonomy that will likely come from executive agreements and trade treaties that have the potential—valid under the *Clark v. Allen* constitutional standard no less than under that of *Curtiss-Wright* and *Zschernig*—for undermining vital elements of state economic policy.

### A SHIFT BACK TO THE CENTER

That this is not a theoretical warning or a gloomy scholarly fantasy is suggested, to cite only one example from real-life American diplomacy, by the terms of the June 28, 1990 report of the United States government on the U.S.-Japan Structural Impediments Initiative.<sup>58</sup> This remarkable document expresses in broad terms a range of principled commitments by each government to seek legislative action within its own domestic legal system. The commitments undertaken by Japan range from its avowal to reduce its account surpluses in foreign trade to pledges to restructure inheritance taxes and home-ownership subsidy policies. Japan also signed to commitments that echo in truly eerie phrases the language and substance of many Occupation-era policies of nearly half a century ago—of commitments to undertake reforms as to antitrust policy, interlocking directorates and *keiretsu* relationships between the largest banks and the manufacturing, marketing, and service corporations.

A reading of the U.S. commitments in this document offers a window through which to observe the importance of state economic policies in relation to the terms of international bilateral trade relationships—and also offers, I think, a rather grim portent of what may be expected in the future concerning the ways in which autonomous and independent state pursuit of economic policy preferences and interests might be constrained



by a shift back to the center. The commitments to which the United States has signed include:

1. to seek measures to reduce "uncertainty" about antitrust laws and treatment of joint production ventures;

2. "reform (of) product liability laws by contributing to uniformity among the states and limiting damage awards," with the administration "strongly endorses(ing) the Product Liability Coordinating Committee Act . . .";

3. assurance of an "open and non-discriminatory direct investment policy . . .";

4. a specific commitment to seek "partial relaxation of the ban on exports of California heavy crude oil";

5. a new initiative by the Trade Promotion Coordinating Committee, in the Department of Commerce, to "unify and streamline Federal trade promotion activities."

With regard to all the foregoing, one may reasonably ask at the threshold: what will be the impact on the states? This agreement is not a treaty, but a joint statement embodying commitments of principle and intent; nonetheless, it highlights the emerging question of how wide a discretion can and will be left to the states in the areas and functions that really count.

And what counts, as I have contended here, are not the "diplomatic bagatelles" that the Supreme Court even in its most nationalistic moments is willing to tolerate—nor is it the cheerleading and parades and ribbon-cutting, the trade shows, the 30-second bites on Chinese television, or the like. Rather, what really counts is the core substance of policy in the management of natural resources and their uses, in taxation, corporate and antitrust law, R&D subsidies, and other functions that one can easily predict may soon come into conflict with important foreign policy commitments. These commitments, once approved in either executive agreement or treaty form, would serve as the basis for preemption of state autonomy; or, alternatively, Congress might legislate to preempt fields, as it has done in so many in the past, in which the states have pursued competitive promotional policies, or have imposed varying regulatory regimes over products and industries and activities.

Already we have seen the emerging features of this picture in the Free Trade Agreement provisions on antitrust regimes, energy production and trade, lumber subsidies, and other aspects of Canada-U.S. trade relations. The likelihood that constraints and preemption of state law will increase in future years is suggested by the attention now being given not

only to GATT negotiations and new regional trade agreements such as the initiative with Mexico, but also to multilateral environmental initiatives embodied in the U.N. agreements on endangered species, living resources of the sea, and transnational air pollution. They and other matters that are open to international negotiation involve precisely the sort of issues for American constitutional federalism as did the famous Canada-U.S. agreement on migratory birds that generated one of the earliest constitutional controversies—and, in *Missouri v. Holland*, the first important modern decision on the treaty power and set in motion the attenuation of state authority in the resources and environmental area.

One must grant that the states can exercise a powerful influence in the relevant political processes—especially because of the constitutional structural guarantee that the Senate must ratify any major treaties or trade agreements, or alternatively give special discretionary authority to the president, as with the "fast-track" authority in trade negotiations—may provide a consistent political bias against serious preemption of state regimes. Given the style and preferences of the Bush administration in the conduct of international economic diplomacy, however, much more important were diplomatic initiatives that would have made uniformity of national policy (on lines suggested in the U.S.-Japan document of 1990), and an attenuation of state authority, the preferred instrument for pursuit of national goals in the name of "competitiveness" and in the quest for maintaining the viability of the U.S. economy.

The Clinton-Gore campaign in 1992 made an issue of how U.S. economic diplomacy ought to respond to the challenges of international competition. How the policies that the new administration will put in place will affect state autonomy—and will affect the substance of policy areas identified here as vital—is an intriguing and important question that remains to be answered in the coming years.

## NOTES

<sup>1</sup>See papers by Kevin Archer, John M. Kline, and Earl Fry in this volume; and John Robinson, *Multinationals and Political Control* (New York: St. Martin's Press, 1983); and the compressed but very insightful survey of modern changes presented in John M. Curtis, "The Evolving World Economic Order," *Proceedings of the Conference on International Law: Critical Choices for Canada, 1985-2000* (Queens Law Journal, Kingston, 1986): 259-62 *et passim*. I have also drawn in this first section from John Dwyer and Harry N. Scheiber, *Autonomy, Sovereignty, and the Modern World Economic Order: The Challenge*

to *American Law* (report prepared for the Office of Technology Assessment, U.S. Congress, 1988).

<sup>20</sup>"International Economic Competitiveness" (symposium), *Intergovernmental Perspective* (Advisory Commission on Intergovernmental Relations), 16 (Winter 1990); Robert Reich, *The Work of Nations* (New York: A. A. Knopf, 1991), *passim*.

<sup>3</sup>For general discussions and theoretical implications of this phenomenon, see, e.g., Ivo Duchacek et al., eds., *Perforated Sovereignities and International Relations* (New York: Greenwood Press, 1988); and Earl Fry et al., eds., *The New International Cities Era: The Global Activities of North American Municipal Governments* (Provo, Utah: David M. Kennedy Center for International Studies, Brigham Young University, 1989); and C. Lloyd Brown-John, ed., *Centralizing and Decentralizing Trends in Federal States* (Lanham, Md.: University Press of America, 1988).

<sup>4</sup>See symposium issue of *Annali di Storia dell'Impresa* (Italy), 3 (1987), especially contributions by Vera Zamagni; John Pinder, ed., *National Industrial Strategies and the World Economy* (Totowa, N.J.: Allanheld, Osmun; London: Croom Helm, 1982); Charles Kindleberger, "Multinationals are Booming," *Challenge* (May-June 1986), 41-49.

<sup>5</sup>See, for example, the symposium issue of *Ecology Law Quarterly*, 12 (1985), on international environmental challenges; Kindt, "International Environmental Law and Policy: An Overview of Transboundary Pollution," *San Diego Law Review*, 23 (1986): 583; Donald Smith et al., "International Sharing and Management of Resources," *Critical Choices for Canada* (Queens Law Journal Conference, *supra* note 2): 275-390.

<sup>6</sup>Luc Cuyvers, *Ocean Uses and their Regulation* (New York: Wiley, 1984).

<sup>7</sup>See, e.g., symposium on political and legal responses to the 1989 U.S. presidential declaration of a 12-mile territorial sea, forthcoming in *Territorial Sea Journal* (1992), especially contributions by John Briscoe, Chris Carr and H. N. Scheiber, and Jon Van Dyke and Casey Jarmon.

<sup>8</sup>John M. Kline, "United States' Federalism and Foreign Policy," this volume. See also Duchacek et al., *Perforated Sovereignities and International Relations* (New York: Greenwood Press, 1988).

<sup>9</sup>John M. Kline, *State Government Influence in U.S. International Economic Policy* (Lexington, Mass.: Lexington Books, 1983); Symposium, "State and Local Governments in International Affairs," *Intergovernmental Perspective* (ACIR), 16 (Spring 1990). See especially John Kincaid, "State and Local Governments Go International," *ibid.*, 6-10.

<sup>10</sup>John Kincaid, "Implications of Constituent Diplomacy for the Future of Federalism and the Nation-State," *North American and Comparative Federalism: Essays for the 1990s* (Institute of Governmental Studies, UC Berkeley), 27-46.

<sup>11</sup>Indeed, as the great Soviet debate over economic policy works its course, in the uncertain political context of disunion and the post-coup retrenchment of August-September 1991, the Reagan-Thatcher approach to the ideal of a free market is represented strongly at one pole of Soviet officialdom as well as in elite opinion. See, e.g., Symposium, "Privatizing and Marketing Socialism," *Annals* 507 (Jan. 1990): 9-141; and "After the Soviet Union," *Business Week*, Sept. 9, 1991, 26-37.

<sup>12</sup>Glenn E. Brooks, *When Governors Convene* (Baltimore: Johns Hopkins Press, 1961), 109-10. See Kline, *State Government Influence*, 47-48.

<sup>13</sup>Graves, *American Intergovernmental Relations: Their Origins, Historical Development, and Current Status* (New York: Scribner, 1964), 359.

<sup>14</sup>Scheiber, "State Law and Industrial Policy in American Development, 1789-1987," *California Law Review* 75 (1987): 415-44.

<sup>15</sup>Scheiber, "Federalism and the American Economic Order," *Law and Society Review*, 10 (1975). See also Blaine Liner, "States and Localities in the Global Marketplace," *Intergovernmental Perspective*, 16, no. 2 (1990): 11-12; and Scheiber, "Xenophobia and Parochialism in the History of American Legal Process: From the Jacksonian Era to the Sagebrush Rebellion," *William & Mary Law Review* 23 (1982): 625-61.

<sup>16</sup>See generally Peter K. Eisinger, *The Rise of the Entrepreneurial State: State and Local Economic Development Policy in the United States* (Madison, Wis.: University of Wisconsin Press, 1988).

<sup>17</sup>The works of Willard Hurst, on American law and economic development, indicate how profoundly state policies influenced patterns of institutional change and expressed rivalries. See, e.g., James Willard Hurst, *Law and Economic Growth* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1964), a study of the Wisconsin lumber industry. The theme is pursued in a more general mode in Scheiber, "Parochialism and Xenophobia"; and Scheiber, "Federalism, the Southern Regional Economy, and Public Policy Since 1865," *Ambivalent Legacy: A Legal History of the South*, ed. D. Bodenhamer and R. Ely (Jackson, Miss.: Jackson University Press of Mississippi, 1984), 69-105.

<sup>18</sup>"Maryland and Virginia Helping Companies Crack Euro Market," *Washington Business Journal*, April 30, 1990, 10. On the colonial marketing efforts, see Theodore Saloutos, "Efforts at Crop Control in 17th Century America," *Journal of Southern History*, 12 (1946).

<sup>19</sup>Scheiber, "Federalism and the American Economic Order," 57-118; *id.*, "Federalism, the Southern Regional Economy, and Public Policy Since 1865," 69-105.

<sup>20</sup>This argument for centralization is one that I have propounded for a long time, despite being very lonely in taking this position against the conventional wisdom in political science of the 1960s and 1970s. At that time, the prevailing notion was that "noncentralization" had made problems of centralism and decentralization obsolete. The preponderance of scholarly opinion seems to have

swung away since then, however, and again accepted the view taken here. (See, e.g., *Emerging Issues in American Federalism: Papers prepared for ACIR's 25th Anniversary* [Washington, 1984], especially contributions by Senator Richard Lugar, by Scheiber, and by Daniel Elazar.)

<sup>21</sup>Susan Foote, "Administrative Preemption: An Experiment in Regulatory Federalism," *Virginia Law Review* 70 (1984): 1429ff.; cf. Martha Derthick and P. Quirk, *The Politics of Deregulation* (Washington, D.C.: Brookings Institution, 1985).

<sup>22</sup>See, *inter alia*, Kline, *State Government Influence*; and Kincaid, "State and Local Governments Go International."

<sup>23</sup>California Legislature, Senate Select Committee on Border Issues, Drug Trafficking and Contraband, *Impact on the California Economy of In-Bond Industries ("Maquiladoras"), Located in Baja California, Mexico* (1987), *passim*.

<sup>24</sup>See especially papers in this volume by Kincaid, Fry, and Kline, especially the section entitled "The Spectrum of Subnational Activities in the United States," in Kline *infra* (this volume).

<sup>25</sup>National Association of State Development Agencies data for FY 1988. See Table 7.3 in the Archer/Morici paper, this volume, for data on 33 states' budgets. See also discussion of trends in state financing of export promotion, in William O. Scouton, "States See Exports as a Tool for Local Business Expansion," *Business America*, Feb. 27, 1989, 7.

<sup>26</sup>*Capital District Business Review*, vol. 17, no. 25 (Oct. 1, 1990): 13. See also listing of common international trade services, with commentary on the spending being "not significant compared to many other state functions," in Liner, "States and Localities," 13-14.

<sup>27</sup>"The State's Export Offensive," *Boston Globe*, Sept. 2, 1990, 69.

<sup>28</sup>An argument for this view is provided by Governor Tommy Thompson, in "Going Global: A Governor's Response," *Intergovernmental Perspective* 16(2): 15-17.

<sup>29</sup>See Dan Pilcher, "State Roles in Foreign Trade," *State Legislatures*, April 1985, 18-23.

<sup>30</sup>It is interesting to note, however, that one of the most knowledgeable and experienced commentators on modern American federalism has included "foreign affairs, national economic policy, [and] trade policy" in the list of functions that are best (and ought to be) exercised by the national government. She cedes "industrial policy" to the state arena, but not its foreign economic policy dimension. (Alice Rivlin, "The Challenge of Competition to Fiscal and Functional Responsibilities," *Intergovernmental Perspective* 16 (Winter 1990): 15-16.)

<sup>31</sup>*Crain's Detroit Business*, March 19, 1990, 18.

<sup>32</sup>See, e.g., George Rogers Taylor, *The Transportation Revolution, 1815-1860* (New York: Rinehart, 1951), for the antebellum record of state government promotion and subsidies.

<sup>33</sup>Liner, "States and Localities," 11. This "early approach" to international markets, Liner avers, "was generally an expansion of domestic industrial location services. . . . Clearly, it worked very well." *Ibid.*, 12.

<sup>34</sup>Robert Reich raises these questions thoughtfully in a critique of the U.S. response to globalization and its challenges, in *The Work of Nations*. See also Scheiber, "State Law and Industrial Policy," 441-44.

<sup>35</sup>*Impact on the California Economy*, hearings cited in note 23, *supra*.

<sup>36</sup>"States Unite to Promote their Business Abroad," *New York Times*, Dec. 16, 1990, sec. 1, p. 21.

<sup>37</sup>*Ibid.*

<sup>38</sup>"Ohio Puts Foreign Trade on the Fast Track," *Ohio Business*, vol. 13, no. 10 (Oct. 1989), sec. 1, p. 58.

<sup>39</sup>Some readers may find a small measure, at least, of hyperbole here in my reference to quixotic current trade ambitions of various municipalities and states. However that may be, it will be interesting to revisit this subject in 10 years to assess, for example, the outcome of Tulsa, Oklahoma, officials' effort in 1990 to build on existence of the 440-mile McClellan-Kerr Waterway to the gulf as the key to ambitious new trade ties being negotiated with Hungary, Poland, Singapore, Japan, China, and India. (See *Tulsa World*, April 8, 1990, 1; and *Tulsa Business Chronicle*, April 30, 1990, 3, on the push for China trade.)

<sup>40</sup>See Kline, "United States' Federalism and Foreign Policy," this volume; Scheiber, "State Law and Industrial Policy," 435-44.

<sup>41</sup>Some of these issues are reviewed critically in Jesse H. Choper, "Law before and after Garcia," in *Perspectives on Federalism: Papers from the First Berkeley Seminar on Federalism*, ed. H. N. Scheiber (Berkeley, California: Institute of Governmental Studies, 1987), 31-40.

<sup>42</sup>See fuller discussion in paragraphs following. Even in 1931, it was recognized in standard treatises that the Taney Court's approach had been abandoned as a matter of accepted doctrine. See, e.g., Harold W. Stoke, *The Foreign Relations of the Federal State* (London, H. Milford: Oxford University Press, 1931), 110 *et passim*.

<sup>43</sup>Kincaid, "State and Local Governments Go International," 9.

<sup>44</sup>The "Buy American" and other preferential policies of the state and municipal governments have long been an interesting question in American law and policy—and have become a major issue in relation to GATT and other negotiations regarding U.S. international trade. See note, "Foreign Commerce and State Power: The Constitutionality of State Buy American Statutes," *Cornell International Law Journal*, 12 (1979): 109ff.; Note, "California's Buy-American Policy: Conflict with GATT and the Constitution," *Stanford Law Review*, 17 (1964): 119ff.

<sup>45</sup>The classic modern discussion of this issue is Edward S. Corwin, *The President: Office and Powers*, 4th rev. ed. (New York: New York University Press, 1957); but see also Louis Henkin, *Foreign Affairs and the Constitution*

(Mineola, N.Y.: Foundation Press, 1972); and Michael M. Uhlmann, "Reflections on the Role of the Judiciary in Foreign Policy," *Foreign Policy and the Constitution*, ed. R. A. Goldwin and R. A. Licht (Washington, D.C.: AEI Press, 1990), 41-53. In a series of recent studies, the historian Walter LaFeber has been exploring the constitutional and political development of the idea of a plenary foreign affairs power in the hands of the Executive. See e.g., LaFeber, "The Constitution and U.S. Foreign Policy: An Interpretation," *Journal of American History*, 74 (1987): 695-717 (reprinted in David Thelen, ed., *The Constitution in American Life* [Ithaca: Cornell University Press, 1988]).

<sup>46</sup>See discussions in Uhlmann, "Reflections on the Role of the Judiciary," 46-48; and Charles Lofgren, *Government from Reflection and Choice* (New York: Oxford University Press, 1986), 168-73. On Sutherland's notion of sovereignty as passed down from the Crown, rather than deriving in the realm of foreign affairs from the Constitution, cf. LaFeber, "Constitution and U.S. Foreign Policy," 711; and Scheiber, "Federalism and the Constitution: The Original Understanding," *American Law and the Constitutional Order*, ed. L. M. Friedman and H. N. Scheiber (Cambridge, Mass.: Harvard University Press, 1978), 86.

<sup>47</sup>LaFeber, "Constitution and Foreign Policy," 711. See also *United States v. Pink*, 315, U.S. 1203 (1942). In *Hines v. Davidowitz*, 312, U.S. 52, 63 (1941), the Court reiterated that "the Federal Government . . . is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties"; in *Fong Yue Ting v. United States*, 149 U.S. 69, 711 (1893), the Court had found that the United States Government was "vested with the entire control of international relations, and with all the powers of government necessary to maintain that control and to make it effective."

For analysis of the Act of State doctrine, which in the U.S. federal courts has become intertwined with separation-of-powers issues, see especially *Williams v. Curtiss-Wright Corp.*, 694 F. 2d 300 (1982), 90; and discussion of this theme, which scope of the present essay does not permit me to take further here, in A. D. Neale and M. L. Stephens, *International Business and National Jurisdiction* (New York: Oxford University Press, 1988), 90-98 *et passim*.

<sup>48</sup>See Stoke, *Foreign Relations*, 113.

<sup>49</sup>*Missouri v. Holland* is discussed in Graves, *American Intergovernmental Relations*, 370-72; and Lofgren, *Government from Reflection and Choice*, 167-205.

<sup>50</sup>Lofgren, *ibid.*, 120-22.

<sup>51</sup>Holmes wrote that the power to conduct foreign relations in matters of national importance was inherent; it was, he stated, quoting an earlier decision, founded upon "a power which must belong to and reside somewhere in every civilized government," and so "it is not to be lightly assumed" that such power is to be found wanting "in matters requiring national action."

<sup>52</sup>See Ernest R. Bartley, *The Tidelands Oil Controversy: A Legal and Historical Analysis* (Austin: University of Texas Press, 1953).

<sup>53</sup>*Michelin Tire Corp v. Wates*, 423 U.S. 276, 285 (1976); *Japan Line Ltd. v. County of Los Angeles*, 441 U.S. 433 (1979). See Kenworthy, "The Constitutionality of State Buy-American Laws," *University of Missouri, Kansas City Law Review*, 50 (1981).

<sup>54</sup>Heyman, "The Nonresident Alien's Right to Succession under the 'Iron Curtain Rule,'" *Northwestern University Law Review*, 52 (1957): 221; Note, "Estates: Soviet Citizens Can Inherit Under California Law," *California Law Review*, 55 (1967): 592; Grace A. Jubinsky, "Note: State and Municipal Governments React Against South African Apartheid: An Assessment of the Constitutionality of the Divestment Campaign," *University of Cincinnati Law Review*, 54 (1985): 543. On the related Cold War-oriented use of boycotts, including those instituted under authority of state law, see Richard B. Bilder, "East-West Trade Boycotts: A Study in Private Labor Union, State, and Local Interference with Foreign Policy," *University of Pennsylvania Law Review*, 118 (1970): 911.

I am much indebted to M. A. Thomas, Class of 1990, Boalt Hall School of Law, for her study, "Unbundling the Foreign Affairs Power," written for my 1990 third-year seminar on American federalism, at Boalt Hall, which provided an excellent analysis of the constitutional issues that have been raised in recent years. These issues have been set forth with buoyant enthusiasm from the states' rights side by Michael Shuman, "What the Framers Really said about Foreign Policy Powers"; and with more conspicuous clarity and equal zeal on the other side by Peter J. Spiro, "The Limits of Federalism in Foreign Policymaking," both in *Intergovernmental Perspective*, vol. 16, no. 2 (Spring 1990): 27-31, 32-34.

<sup>55</sup>331 U.S. 503, 517.

<sup>56</sup>This decision is not without its critics also, it must be acknowledged, among scholars who do not necessarily sympathize with Shuman's views on paradiplomacy and its sacrosanct constitutional foundations in original intent of the Framers. See, e.g., Henkin, *Foreign Affairs and the Constitution*, 239 and n. 51.

<sup>57</sup>Earl H. Fry's paper in this volume, quite properly stresses the significance of a Supreme Court decision of more than 50 years ago that upheld the right of states to engage in regulation of price and supply of oil and gasoline—a legal support, as it proved, for the state of Texas's sending an observer-representation at an OPEC meeting. Whether Texas would be permitted to negotiate or pursue real commitments is an entirely different question; there seems no doubt that any such commitment that ran against official U.S. policy would be quashed by U.S. authorities with little ceremony or serious legal challenge.

<sup>58</sup>"Key Elements of U.S.-Japan Structural Impediments Initiative Report," *Antitrust and Trade Regulation Report* (Bureau of National Affairs), vol. 59, no. 1473 (July 5, 1990), 28ff.



# *The Evolving Role of the Provinces in Canada-U.S. Trade Relations*

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## INTRODUCTION

Few areas of public policy illustrate so clearly the effects of economic globalization as does international trade. The formation of trade policy encompasses both the daily conduct of trade relations and the more episodic conduct of formal trade negotiations. This chapter addresses the development of an important trend in the nature and conduct of Canada's external trade policy. While Canada, like other democratic industrial societies, must undertake a series of domestic negotiations and consultations to achieve trade policy, its domestic politics have evolved with a unique element of intensive intergovernmental relations.

Canada is not alone as a federation, in having to face the increased role of its constituent governments in international affairs.<sup>1</sup> Canada would appear, however, to be relatively unique in the degree of involvement of its provinces in the formation of external trade policy. This is certainly true of its major trade partner, the United States, but also of other

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important advanced industrial federations such as Germany, Switzerland, and Australia. Indeed a more apt comparison could be made with the European Community, which of course is more of a confederation of sovereign states than it is a federation.<sup>2</sup>

This chapter seeks to examine the origins and causes of the evolving role of the provinces in Canadian trade policy and to review its impact on Canadian trade policy over the past 20 years. As a relatively new phenomenon in the Canadian domestic process, this evolved role will be assessed in terms of its evident strengths and weaknesses and in terms of its impact on Canada's ability to achieve specific trade policy objectives.

The thesis of this chapter is that the federal constitution in Canada and the evolution of the institutions of intergovernmental relations are indeed having significant impact on the domestic politics and process of Canadian trade policy. The nature of that impact, and whether it is detrimental or not to Canadian trade policy objectives, can be demonstrated by examining the evolution of this role in Canada-United States trade relations. Of course, the definition of Canadian trade objectives itself can also be an important issue in the domestic process. After examining the record of recent trade policy in Canada, assessments of the nature of the provincial role and the identification of means to improve trade policymaking can be made.

The first section of this chapter provides background comments on how the provincial role in Canadian trade policy has arisen, with an emphasis on the increasing interdependence of economic policymakers at all levels of government, and the constitutional, regional, and institutional framework of executive federalism, which characterizes intergovernmental relations in Canada. Some brief points of comparison are drawn between the effect of the Canadian and American federal system on their respective trade policy communities.

The second section of this chapter reviews the evolution of the provincial role in Canada-United States relations by examining the increasing involvement of provinces between 1970 and 1985, the bilateral trade negotiations in 1985-88, which led to the Canada-United States Free Trade Agreement, and the resolution of the softwood lumber disputes of 1982-83 and 1986-87.

The concluding section provides a summary assessment of the evolved role of the provinces in trade policy. This includes an assessment of the effectiveness of this role in pursuing provincial policy objectives, including the shaping of local economic conditions, as well as the impact of the role on national trade policy objectives. The ongoing agenda in

international trade policy is surveyed to indicate the nature of ongoing policy challenges. The chapter concludes with a set of options for the conduct of federal-provincial relations in trade policy and the continuing debate over the appropriate role of the provinces in formulating the policy response.

## **BACKGROUND ISSUES: CANADIAN FEDERALISM AND INTERNATIONAL ECONOMIC RELATIONS**

The federal character of Canada has always influenced its international relations. It has shaped Canada's image and personality abroad, and at least for the past 50 years, it has cast its features onto foreign policy in many areas.<sup>3</sup> As Canada evolved into a fully sovereign country early in this century, it did so with some unique constitutional constraints, even among federal countries. Together with recent developments in trade policy and in the Canadian federal system in general, these constraints provide the background to the evolving role of the provinces in trade policy. There are thus two sets of factors to be considered: those that are external to Canada as provided by the changing international environment for foreign policy and those that are internal as provided by the institutional and societal forces that have shaped Canadian federalism.

### **External Factors**

The external factors that have drawn Canadian provinces into the field of external trade policy are not unique to Canada. Chief among these is the phenomenon of global interdependence among formal sovereign actors. At the root of this interdependency is the meshing of global and domestic concerns in a more complex and interconnected world. This is not a new phenomenon, but it is characteristic of the second half of the twentieth century in which the concept of the "global village" has emerged, thanks to communications and transportation technology, and to social, economic, and political forces that have global reach.<sup>4</sup>

Affected by and contributing to this interdependence has been what Thomas Levy has described as the "internationalization of domestic policy, and the domestication of international relations."<sup>5</sup> Part of this phenomenon has been the rising role of constituent units in the foreign policy of federal states, and of subnational units more broadly defined in many other sovereign states.

In terms of the economic dimension of international relations, Canadian provinces have attempted to shape or to mediate the global forces that so daily constrain the domestic policy environment. They do so in five definable roles. First, they promote trade and investment; second, they regulate their domestic economies in ways that affect international trade; third, they subsidize the production of goods and services; fourth, they are substantial commercial purchasers, at home and abroad; and fifth, they act as advocates and collaborators in shaping the foreign economic policy of the federal government.<sup>6</sup>

These provincial roles are similar to the role played by constituent units in other federal countries, contributing to what has been called "perforated sovereignty."<sup>7</sup> This phenomenon complicates trade policy, especially in light of the fact that the scope of what constitutes trade relations and policy has broadened in the past 40 years. Since the adoption in 1947 of the General Agreement on Tariffs and Trade (GATT) the ambit of trade policy has expanded beyond the original emphasis on tariffs as the chief means of regulating trade, to embrace what is in its broadest terms an "economic constitution" between states. Only since the Tokyo Round of Multilateral Trade Negotiations under the auspices of the GATT in 1973-79, however, have nontariff measures been a primary focus of policymakers.<sup>8</sup> And while trade practices such as antidumping and the countervail of subsidies have been around for decades, the increased recourse in recent decades to what Rodney Grey has called "contingency protection," has raised these issues to prominence on the trade policy agenda. Other issues such as the extension of trading regimes beyond goods to include services, intellectual property and investment, as well as the inclusion of categories of goods largely exempt until now such as agriculture, have also served to expand the scope of policy beyond tariffs.

This expanded scope of trade policy has been, of course, due to the expanded role of governments in the economy since World War II. This trend has challenged and greatly complicated the often contradictory efforts to liberalize world trade through successive GATT rounds and elsewhere. In the process, trade policymakers have had to deal with a much broader community of interest than was previously the case. As noted, in federal states this broader community includes the constituent governments (in Canada, the provinces). Nonetheless, there are features unique to the Canadian version of this broader phenomenon, for reasons peculiar to constitutional and regional conditions in Canada.

## Internal Factors

The increased role of the provinces in Canadian trade policy arises from the interplay of a number of internal factors, including regionalized economic and social forces and the determinants of institutional formation.<sup>9</sup> Constitutional provisions and practice have carved out a role for provincial jurisdiction in many matters impinging on trade policy, especially so with the broadening of the scope of trade policy described above. Added to this is the development throughout Canadian history of significant regional differentiation in economic roles, which previous trade policy not only highlighted, but in some measure created.<sup>10</sup> Federal and provincial policy objectives overlap, and governments are interdependent on one another to achieve policy results. The institutional legacy of parliamentary government combined with federalism has resulted in the development of intergovernmental relations with a marked emphasis on relations between or among the executives of the federal and provincial governments—or "executive federalism," as first coined by Donald Smiley.<sup>11</sup> These three factors—the constitutional framework, the regional political economy, and executive federalism—provide the internal factors that have led to the evolving role of the provinces in Canadian trade policy.

The constitutional framework need only be sketched here briefly.<sup>12</sup> Despite a wide array of constitutional powers including the royal prerogative, the trade and commerce power, customs and excise, transportation and monetary matters, the federal government is nonetheless constrained by two constitutional factors: the split jurisdiction for the implementation of treaties, and the limited reading given by the courts of the trade and commerce power.

Judicial review in 1937 determined that while the federal government has full powers to enter into treaties, it cannot implement them where the subject matter falls within provincial jurisdiction.<sup>13</sup> Canada as an international personality can only act, therefore, in areas of provincial jurisdiction where provincial agreement exists to do so.

The scope of the trade and commerce power also has been limited in Canada, especially when compared to the commerce power in the federal constitutions of the United States and Australia. Intraprovincial trade has been exempt from federal jurisdiction and even interprovincial and international trade has been interpreted to leave a large measure of resource management and industrial policy to the provinces.

Together with other provincial powers such as over property and civil rights, this constitutional development has led to a number of "nontariff barriers" arising from provincial powers. John Quinn has identified the following six categories into which a broad range of provincial measures may fall: (1) purchasing policies by provincial governments and their agents; (2) the regulation of services within provincial boundaries; (3) agricultural policies, in particular the supply management apparatus, but also other support programs and standards; (4) resource management policies that control exploitation, export, and transformation of natural resources; (5) industrial policies including subsidies; and (6) regulation of the sale of alcoholic beverages.<sup>14</sup>

When considering the constitutional resources that the federal and provincial governments bring into play, two cautionary notes are worth making. First, the jurisprudence surrounding the ongoing interpretation of constitutional law is in constant flux, and while a strong propensity towards federal balance seems to have prevailed over time,<sup>15</sup> one cannot rule out future interpretation that could tilt that balance in favour of the federal government in the face of the continuing impact of global economic change. Second, the existence of constitutional resources does not always ensure their use. It takes political will to flex legal muscles. The federal government has at times stepped back from pushing its perceived jurisdiction to the limit.

To better understand these political constraints, it is important to review the regional economic background to trade policy in Canada. The regionalized economy of Canada has been a major factor in the domestic consideration of Canada's trade policy throughout most of our history. Canada as an economic unit was created in 1867 partly in response to the abrogation of the Reciprocity Treaty with the United States. Free trade or protection was a constant political theme throughout the nineteenth century. With the inauguration of a more comprehensive national tariff structure in 1879 (the "National Policy" as it would later be called), the stage was set for the integration of an East-West economy behind relatively high tariff walls. The putative effects of the National Policy in determining the regional division of labour within Canada were not necessarily evident in the nineteenth century. Manufacturing only slowly declined in the Maritimes. The West was too busy coping with the settlement boom to notice. Only in the 1920s and onward has the national tariff become an essentially regional issue. (It had always been a sectoral issue, as the farming community across Canada was in favour of free trade at least until the end of World War II.)<sup>16</sup>

Nonetheless, manufacturing gradually concentrated in Ontario and Quebec, leaving the western and Atlantic provinces dependent upon export-oriented resource sectors. Disparities in economic growth, wealth, diversity, and stability resulted in increased political discontent and alienation. The National Policy raised industrial and consumer costs in the resource-producing regions, kept the Canadian dollar higher, and prevented the diversification of the industrial base outside of central Canada.

The progressive liberalization of Canada's tariffs through successive GATT rounds has reduced the impact of protection in Canada. However, consensus on the pace of change has never been easily attained, with central Canada urging caution and the resource regions urging speed. The regionalized positions on trade have not been immutable, however. Two recent examples are the gradual shift in position of Quebec towards trade liberalization in the decade from 1979 to 1989, and the position of major interest groups such as the Canadian Manufacturers Association, traditionally a protectionist bastion, to endorse Canada-U.S. free trade after 1983.

Suffice to state, however, that regional interests do and continue to differ markedly in Canada over trade interests. This in itself does not make Canada unique. Where Canada is relatively unique is the way in which the expression of regional interests has come to be concentrated in the provincial governments.<sup>17</sup> This is due not only to the constitutional powers exercised by the provinces in economic matters, noted above, but also to the weak level of regional representation in federal institutions.<sup>18</sup> As a result of these developments, intergovernmental relations, already disposed to emphasize executive relations, and burdened with the task of dealing with the overlapping jurisdiction and interdependencies of the modern exercise of government, come to carry the function of regional representation as well.

Part of the rise of executive federalism in Canada has been the increasing size and sophistication of the provincial government bureaucracies. Indeed, bureaucratic interests must be taken into account in any examination of the roots of an increased trade policy role by the provinces. For as the provincial civil services grew, their expertise grew, not only in the traditional areas of their concern (resources, social services, education) but also in many areas of trade policy.<sup>19</sup>

Thus, the regional representation role of the provinces is an important underlying factor in the domestic politics of Canadian trade policy. Almost by definition, trade policy generates regional conflicts, as

discussed above. The provincial role as chief advocate for regional interests, when combined with the constitutional authority of provinces in so many matters related to trade policy, creates the conditions for federal-provincial relations in trade policy. The one factor feeds on the other, lending political legitimacy where legal force alone may not suffice. The case need not be overstated. The federal government has much jurisdictional clout in trade matters. It also has significant ability to represent or reflect regional variations of interest. However, the combination of factors described here, especially the evolution of executive intergovernmental relations so well entrenched in recent decades, has meant that the federal-provincial dimension has become increasingly more complex and more prominent.

These factors that are unique to the Canadian internal and domestic political process can be further highlighted by comparing the operation of the federal system and its impact on the trade policy process in the United States. At the risk of oversimplification, some pertinent comments can be made.

The U.S. federal system is fundamentally different from the Canadian system in two basic respects. First, America's constitutional separation of powers among the executive, legislative, and judicial branches of government, for both the federal and state levels of government, creates conditions for a very different type of intergovernmental relations.<sup>20</sup> The separation of powers disperses and limits power for all policymaking both within and among the federal and state governments. The resulting intergovernmental relations are a diffuse matrix (Morton Grodzin referred to the "marble cake" of U.S. federalism compared with the "layer cake" of parliamentary federations) of relations among state governors and other executives, state legislators, Congress, and the U.S. executive.

Thus there is no single governmental actor, as there is in parliamentary systems, who can speak authoritatively or can act independently for a state or federal government. However, this limitation on the nature of state representation of its interests is balanced by the strong role given the U.S. Congress to represent state and local interests at the centre. In particular, the Senate composition upon equal representation of each state, provides a most effective forum for regional interests. The congressional representation role is so effective, however, that the federal legislators bypass state representatives in direct constituent relations to economic and other interests within and across the states. The state legislators and executives do lobby Congress as do many other interests, but in the formation of trade policy, pressure from the states is clearly minimal



when compared with Canada, as the detailed examination of trade policy issues later in this chapter demonstrates.

The second basic difference in the two federations affecting trade policy is that the distribution of legislative jurisdiction is much more centralized in the United States. This is true for two related reasons. First, many state powers can only be exercised concurrently with the federal legislature, and as Congress over the years has passed preemptive legislation, state legislative scope has been consequently reduced—including matters related to international trade. Second, the U.S. Congress is given the power "To regulate Commerce with foreign Nations, and among the several states, and with Indian Tribes," by Article I, Section 8 of the Constitution. Judicial review has subsequently defined most commerce as at least interstate, therefore limiting the scope of state powers over economic matters much more so than occurs in Canada.

Finally, unlike Canada, the federal executive and legislature have between them full constitutional power to both execute and implement international treaties and agreements. The existence of this power does not always determine its use, as Congress often exercises extreme caution in preempting state law to impose an international agreement upon the states.<sup>21</sup>

The detailed nuances of the impact of the U.S. federal system are beyond the scope of this chapter, as is an examination of how trade policy is made in the United States.<sup>22</sup> However, from the point of those who must negotiate and maintain trade relations on behalf of the United States and Canada, the function of Congress is roughly comparable in the U.S. system to the role played by the provinces in Canada. Each, within its own domestic sphere, represents the chief set of interests to be managed by federal trade policy.<sup>23</sup> At one level it is ludicrous to compare the U.S. Congress, which under the U.S. Constitution has in effect sovereign powers over trade regulation, to the role of Canadian provinces. However, in terms of locating within the policy process the nexus for domestic negotiation of trade issues, the provinces have come to play a role (as will be demonstrated) that is not dissimilar to that of the U.S. Congress in the U.S. system.

## THE EVOLVING PROVINCIAL ROLE

The developments described in the first part of this chapter have led to an increasing role for provincial governments in trade policy formation. How has this role evolved in practice with specific reference to Canada's

most important trading partner, the United States? What are its structural strengths and weaknesses? What lessons can be drawn from this experience? In an attempt to answer these questions, the next four parts of this paper examine recent experience with respect to general trade relations, the Tokyo Round of multilateral trade negotiations, bilateral trade negotiations, and the softwood lumber dispute.

### **Finding a Voice: Provinces and Canada-United States Trade Relations, 1970-1985**

During the 1970s the provinces slowly but surely came to find their voice on trade policy matters. This they did through a wide range of roles and in differing circumstances. There was a more generally active stance by governments in the promotion of trade and investment in the United States. Provinces also found themselves party to, or at least the brunt of, United States criticism and trade action on several issues. The provincial governments also undertook an increasing advocacy of views on major trade issues, views expressed not only to Ottawa, but also to Washington. The experience of the Tokyo Round of Multilateral Trade Negotiations in the later 1970s added institutional focus and urgency to the evolving provincial role, but a review of the more general relations over this period acts as a backdrop to a more intensive set of trade negotiations and trade disputes that are reviewed in the following sections of this paper.

A review of Canada's international relations from 1970 to 1985 reveals a growing presence of the provinces in Canada-U.S. relations.<sup>24</sup> The provincial offices in the U.S. were increasing in number during this period, and provincial premiers and ministers made frequent trips, mainly to promote investment or trade. It was not only this more benign presence that caught U.S. attention, however. Increasingly, direct actions by the provinces at home landed on the bilateral agenda. These included both investment and trade issues. Of the former, the nationalization of U.S.-owned potash firms by the Saskatchewan government in 1975-76 led to the exchange of diplomatic notes, and there was similar if more moderate concern expressed by Washington over Quebec's takeover of Asbestos Corporation in 1979-81. The effect of provincial intervention on trade and investment flows came increasingly, however, to be focused on subsidy practice. Provincial incentives, loans, and other alleged subsidies for automobile production, fish products, pork, Michelin tires, and, of course, softwood lumber, among others, gradually brought the U.S. trade remedy

community, especially after 1979, to focus as much on Canadian provincial subsidy practice as on federal government actions.

The targeting of these provincial measures by the U.S. government and various other U.S. interests inevitably drew the provinces into consultation with the federal government in Ottawa and into an increasingly active role in the resolution of trade irritants. This trend reached its apogee in the softwood lumber dispute, discussed at greater length below. An equally telling and reinforcing trend has been an increasing propensity of provincial governments to speak out on behalf of regional interests on U.S. trade actions that directly affect them. This encompassed not only the defence of provincial actions cited by U.S. complaints, but also the expression of views on American trade policy and if need be the direct presentation of those views to policymakers in Washington. Several provinces joined in the general condemnation, for example, of President Nixon's import surcharge in 1971, and at least two provinces, Manitoba and Ontario, undertook relief programs to supplement the federal assistance in compensating exporters for the effect of the surcharge. Through the mid-seventies, provincial premiers took their views on energy export policy to Washington, including Premier Lougheed of Alberta who advocated increased oil and gas exports to the U.S. and Premier Schreyer of Manitoba who advocated reduced exports.

Perhaps the most important trend during this period, and one that led to the more intensive intergovernmental relations within Canada on trade policy described in the next sections of this paper, was the increased advocacy and expression of views by provincial governments to the federal government in Ottawa on major bilateral economic issues. Three issues may serve to illustrate this trend. These are the autopact, foreign investment, and energy.

While not restricted to Ontario, the autopact issue is especially illustrative of the growing tendency of this province to find its voice on trade policy matters. Throughout the 1960s there is little evidence that the government of Ontario felt any special need to interfere with the federal government's dominant role in dealing with automobile trade. While the province submitted a brief to the "Bladen" Royal Commission on the automotive industry in 1960, there is no indication that they had any involvement in the negotiation of the 1965 autopact.<sup>25</sup> In 1971, however, the province presented a brief to a federal-provincial conference arguing against eliminating the production safeguards of the agreement, as the U.S. was then demanding. A strong Ontario lobby in Ottawa in late 1971 seems to have helped to scuttle bilateral talks on the autopact, although

in the process contributing to the general deterioration of Canada-U.S. relations during the early seventies. By the mid-1970s, when the terms of auto trade began to turn against Canada, Ontario took on an even more aggressive role.<sup>26</sup> A 1976 budget paper presented a comprehensive review of the autopact,<sup>27</sup> and Ontario raised the issue again at the First Ministers Conferences on the Economy in 1978. Throughout this period the province was actively engaged with the federal government on the issues of incentives to Ford and General Motors for new or upgraded facilities in Canada, and with Chrysler over loan guarantees. In the process, Ontario staked out its turf on the autopact, a position that would have considerable influence in the bilateral negotiations in 1985-88.

A policy issue that involved a larger number of provinces was foreign investment. This is an area where the provincial governments were as a whole never as protectionist as the federal government. Thus the trend over the period was for the provinces to lead in the advocacy of a more liberal approach to foreign investment. Nonetheless, in the 1990s it is easy to forget how much the issue of foreign investment had seized the Canadian public in the early 1970s, affecting the agenda of both federal and provincial governments. Every single province initiated some sort of policy review during the 1970-75 period to deal with public concern about foreign control over firms, ownership of land, or the alleged effect on such diverse matters as education, culture, employment, and trade. The most prominent province in this respect, and the only province to lead the federal government in more nationalist tendencies, was Ontario. The Ontario Legislature's Select Committee on Cultural and Economic Nationalism held extensive hearings and commissioned several reports in 1973-75. That Ontario led the way is not surprising given that it has traditionally been the centre of Canadian economic nationalism in the country.

The attachment of the provinces to more restrictive measures on foreign investment was nonetheless never strong, and throughout the 1970s a growing chorus arose from provincial premiers, especially in the Atlantic and later the western provinces, that Ottawa's investment control legislation was hampering the task of attracting U.S. and other capital. Even Ontario joined in the increasing voices when, for example, Premier Davis spoke to an American audience in November 1981 to assuage misconceptions about the Foreign Investment Review Agency (FIRA). However, as FIRA and the National Energy Program (discussed below) became increasingly linked, and as the United States took Canada to the GATT (General Agreement on Tariffs and Trade) over the performance

requirements in the FIRA legislation, the provinces led the charge, with at least the moral encouragement of Washington, to rid Canada of the worst features of its foreign investment regulations.

The third example of energy is somewhat more complex, if no less important to bilateral relations. Here provincial advocacy of their interests took place mainly in terms of a bitter fight over oil and gas resource rents and related issues pitting the resource producing provinces against the resource consuming provinces. Ottawa played the broker role at first, but in the 1980-84 period assumed a more aggressive role with its National Energy Program (NEP). The issue of exports of oil and gas to the U.S. had pitted the western provinces against the "East" and Ottawa as early as September 1973, when Ottawa placed an export tax on oil. Provincial producer interests were not always uniformly sympathetic to U.S. interests, such as during 1972-75 when the Barrett government in British Columbia caused concern with the imposition of what were in effect quantitative restrictions on the export of natural gas. In most cases, the provinces tended to exploit Ottawa-Washington differences over energy trade issues (as in turn Ottawa-provincial differences were exploited by Washington). However, on the issue of gas exports, it was the federal government that sided with Washington against B.C. The upshot of these differences was to drive provinces into a more active stance on international trade matters.<sup>28</sup>

The National Energy Program represented the nadir in recent Canada-United States relations, and one of the enduring lessons gained from that period is that domestic policy considerations that drove the federal decision to proceed with the NEP, can no longer be made in indifference to international economic relations. As David Leyton-Brown and others have pointed out, the NEP was not designed for its effect on Canada-United States relations.<sup>29</sup> Nonetheless, several features of the policy became major U.S. irritants, including the oil pricing policy, preferential procurement, the crown interest "back-in" for oil and gas leases, and the discriminatory treatment of foreign firms for development incentives. These U.S. grievances coincided with the major grievances of the producing provinces, chiefly Alberta, not least because the export interests of the producers and the investment and import interests of U.S. oil firms were nearly identical. This convergence of interests had long-term consequences for Canadian policy. As the reaction to the NEP set in and coincided with the worst recession in 50 years, support for a more market-oriented approach to both interprovincial and Canada-United States energy trade increased. Ultimately a new federal government came

to power determined to eliminate most forms of government interference with the energy market, meeting both American and resource provinces demands at the same time.

Thus, the provinces gradually found their voice in Canada-United States trade relations in a pattern that, not surprisingly, followed the ups and downs of general bilateral relations in the past two decades. The 1970s began with deteriorating relations, improving during the Carter presidency and worsening again after 1981 and the sharper divergence between the resurgent U.S. economic liberalism under Reagan and the renewed emphasis on economic nationalism during the Liberal restoration in Canada. (On trade policy matters the U.S. Congress was significantly more protectionist than the administration, but this only added to Canada-U.S. tensions.) Much of the Trudeau government's 1980s agenda involved an aggressive stance towards the provinces on constitutional, energy, fiscal, and other matters. The growing tendency of several provinces towards a more decentralist approach in constitutional matters, and towards a more market-oriented approach in economic matters, coincided with the divergence in international economic relations with Canada's largest trading partner.

Finding a voice on trade policy matters meant that the provinces became more sensitized than they had been to the importance of trade policy and trade relations to provincial interests. This coincided with a growing tendency by provincial governments to directly represent these interests on the national stage, primarily through the increasing intergovernmental relations. Finding a voice also meant finding views on Canadian trade policy means and objectives. There is the beginning in this period of defining Canadian policy as more than just federal policy. Canadian policy came to be equated, at least in the view of provincial executives, with policy that at a minimum considered provincial interests and at most was the product of an integrated intergovernmental process.

For the federal government the provinces' increasing articulation of views on trade policy complicated the domestic and foreign handling of trade matters. So long as the provincial role was confined to speaking out on trade matters, however, it could be managed effectively and was not significantly different from intergovernmental tensions inherent throughout the past two decades in other policy domains where the federal government could in the final analysis, act alone having tested the political winds.

These trends in federal-provincial and bilateral relations were not sufficient, therefore, to create significant change in how trade policy

ultimately got made in Canada. The provinces' increasing propensity to have their own say on trade policy required a specific forum to become reality. Such a forum was provided, first by the multilateral trade negotiations of the Tokyo Round after 1973, and then by the bilateral negotiations after 1985.

### **Finding a Role: The Tokyo Round of Multilateral Trade Negotiations**

Until 1973 the provinces were simply not involved in any systematic way in the making of Canadian trade policy.<sup>30</sup> Provincial leaders spoke out on sensitive matters of trade or through quieter channels made their views known. Nonetheless, through the various tariff cutting rounds under the auspices of the GATT, up to and including the Kennedy Round in the late 1960s, no formal mechanisms for the receipt of provincial views on trade matters appear to have existed. Even for the negotiation of such a momentous bilateral agreement as the Canada-United States Autopact, the provincial government of Ontario was not involved.<sup>31</sup> Contrasting this situation with the 1970s advocacy by Ontario on this issue, described above, and debate between Premier Peterson of Ontario and Canada's trade negotiator Simon Reisman during the recent bilateral negotiations about whether the autopact was on the table, is merely to underscore how the perceived provincial role in articulating their interests in matters of federal jurisdiction has changed in a matter of only 20 years.

The provinces have potentially been involved in multilateral trade policy for some time. As a signatory to the GATT since 1947, Canada has been bound by the "federal state clause." This provision, article XXIV (12) states:

Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory.<sup>32</sup>

The requirement to take these "reasonable measures" appears to be mainly a "best efforts" provision, which is not legally binding on the provinces.<sup>33</sup> There is the perception that article XXIV (12) has been used by Canada's federal government and others as an excuse for not delivering on obligations. Other GATT parties have sought to interpret the meaning of "reasonable measures" as requiring the federal government to use all available constitutional power to obtain provincial compliance, while

Canada and other federal countries have argued for the inclusion of such "federal" clauses to prevent international agreements from compromising their internal federal structures. Nonetheless, there does not appear to have been any case, prior to the Tokyo Round, where provincial compliance in Canada was an issue. This is due to the fact that tariffs, quantitative restrictions, and other measures that were on the agenda fell within exclusive federal jurisdiction.

The provinces were therefore involved, if at all, only sporadically in the formation of Canadian trade policy until 1973. Part of the reason for this was, as noted, the narrow scope of trade negotiations. Another reason is that the aggressive provincial articulation of regional interests in matters of trade policy did not reach its stride until the 1970s. This left the provinces in the same role as other constituent interested parties. As Gil Winham quotes a federal source, the provinces "got told when everyone else got told,"<sup>34</sup> of the results of the successive GATT Rounds up to 1973.

The tariff cutting rounds of multilateral trade negotiations preceding the Tokyo Round had reduced the tariff in most industrial countries to the extent that the nontariff barriers became more visible and were used with more frequency in the absence of tariff-led protection.<sup>35</sup> Thus, when the Tokyo Declaration kicked off the next round of trade talks in 1973, nontariff measures were prominent in the negotiation agenda, as were formula-based tariff negotiations, and sectoral negotiations on agriculture and fisheries, resource products, and tropical products. Among the categories of nontariff barriers that eventually found expression in Tokyo Round codes were subsidies and countervail, government procurement, and technical barriers. All of these had at least the potential to affect provincial jurisdiction and were of keen interest to several provincial governments.

It would appear from the record of events that the provincial role in these negotiations changed considerably through the course of the six-year period. The actual negotiations proceeded slowly, and the dimensions of change required of Canada in its commercial policy became clear only with time. Substantial tariff cuts were required as a result of the adoption of the "Swiss formula," but for the purposes of this chapter, the negotiations on nontariff barriers and their overall importance to the Round, are more germane to the provincial role.<sup>36</sup>

At first the only mechanism for formal provincial input was the Canadian Trade and Tariffs Committee (CTTC), chaired by a federal deputy-minister. The CTTC received and coordinated briefs from all



interested parties, including firms, industry associations, unions, consumer groups, and provinces. By 1975, an ad hoc federal-provincial committee of deputy ministers was created to discuss the MTN agenda; it was said to be "both more political and more continuous" a forum for federal-provincial consultation than the CTTC.<sup>37</sup> Finally, in August 1977, the federal government appointed a Canadian Coordinator for Trade Negotiations (CCTN) with a broad mandate to coordinate input across departments in Ottawa, from industry and from the provinces. This input was fed directly to the federal cabinet and to the Canadian negotiating team in Geneva. Jake Warren, then Canadian Ambassador to the United States, took on the job, which included chairing the federal-provincial committee. According to Gil Winham, Warren's position helped to focus provincial bureaucratic input to the negotiations. The provinces saw this as an improvement over the CCTC, which was not perceived as having any determining influence over the Canadian negotiating position.<sup>38</sup>

Some provinces clearly wanted more direct involvement. Among others, the governments of Ontario, Quebec, British Columbia, and Alberta sent representatives to the negotiations in Geneva, although Ottawa did not agree to their formal inclusion in the Canadian delegation. Quebec even had a permanent representative based in Geneva for the negotiations. Nonetheless, throughout the round, especially in its later stages, all the provinces were kept informed of the progress of the negotiations, and virtually all the provinces provided detailed positions to the federal negotiators. Thus began a movement along the learning curve for growing provincial expertise in trade matters, as more resources were devoted to the analysis of trade issues and detailed consultation with local economic actors in each province. This provincial input helped to sustain the federal negotiating strategy in areas of provincial policy such as procurement and liquor board practices. For some sectoral concerns, in particular the "exception lists" to the tariff reductions, provincial briefs provided an important supplement to federal information, as well as an influence on ultimate negotiation in Geneva. And in general, provincial bureaucratic expertise on trade matters affecting regional interests improved to the extent that they could not be ignored.<sup>39</sup>

As a final note on this increased role of the provinces during the Tokyo Round, it is important to note that the years 1973-79 were significantly marked by an increasingly aggressive provincial advocacy on all aspects of national economic policy. As noted above, the rising emphasis upon executive federalism as the forum for regional interests reached full expression in this period. There were numerous first

ministers and ministerial conferences on economic issues, including trade policy, against a backdrop of rising demands for constitutional reform to decentralize the federation—especially so after the November 1976 election of the Parti Québécois government in Quebec.<sup>40</sup>

In terms of substantive results, the Tokyo Round did directly affect provincial jurisdiction. The most prominent of the Canadian commitments that implicated the provinces was the 1979 Statement of Intent on liquor board practices. Other commitments were embodied in the various nontariff barrier codes. The code on civil aviation, the code on technical barriers, and the code on subsidies and countervail all include "federal state clauses" by which Canada is committed to making at least its best efforts to ensure provincial compliance.<sup>41</sup> The code on government procurement, however, excluded provincial governments or their agents from the lists of Canadian entities covered.

In the end, the provinces were not affected by the results of the Round to the degree that had been expected through the negotiation process. This is not to say that the latitude that the federal government may have had to commit the provinces was constrained. By having the provinces on side through extensive consultation, the federal government was able to play with a more complete deck, even if certain cards were not used in the end.

The general opinion of the federal-provincial consultation process in the Tokyo Round, especially after the establishment of the coordinator's office, was that it contributed to an effective Canadian position. For example, the final report of the "Macdonald" Commission recommended the use of the "successful" procedure followed during the Tokyo Round in future trade negotiations, in particular for the bilateral trade negotiations with the United States, which it recommended.<sup>42</sup> Thus, from the perspective of those in the federal government charged with executing trade policy, the evolved role of the provinces in Canada's policy towards the Tokyo Round contributed to Canada's trade objectives. As one analyst has put it, the process helped to control what had become the chief domestic constituent interest to be managed, the provinces.<sup>43</sup>

Finally, with respect to the impact of these developments on Canada-United States relations, the experience of provincial involvement in the Tokyo Round can be summarized by a number of more indirect effects. For Canada any of the multilateral rounds of trade negotiations under the auspices of the GATT had always been first and foremost a bilateral negotiation with the United States. This is true not only of the many areas where liberalization proceeded only on the basis of bilateral offers

and responses, but also in many of the codifications of rules on nontariff barriers. Thus the Tokyo Round sensitized the provinces to U.S. trade policy demands and limitations, while at the same time it whetted the appetite of several provinces for greater liberalization with the United States. For the United States, the Tokyo Round results were not sufficiently comprehensive to prevent a resurgence of domestic neo-protectionism through the increased scope of their trade remedy laws in the 1979 and 1984 trade acts. This rise in U.S. protectionism, concomitant with the difficult bilateral relations over FIRA and NEP, led directly to the bilateral trade negotiations of 1985-88, to which this chapter now turns.

### **Expanding the Role: Canada-United States Bilateral Trade Negotiations, 1985-87**

The bilateral trade negotiations with the United States stand apart from the previous MTNs (Multilateral Trade Negotiations) for several reasons. The objectives outlined by the federal government for the negotiations were much more comprehensive than those for any previous Canadian trade negotiations. The political and economic stakes were much higher, and therefore the public profile of every aspect of the negotiations, including the federal-provincial process, was much higher as well. Indeed, it can be argued that throughout the bilateral trade negotiations (BTNs), and until the Canada-United States Free Trade Agreement (FTA) was signed on January 2, 1988, the federal-provincial dimension dominated domestic debate in Canada. Only after the signing of the FTA did the debate in Parliament over the implementing legislation overshadow the debate in the intergovernmental arena.

This is not to argue that the intergovernmental discussions within Canada were the only form of domestic negotiation involved in the bilateral trade negotiations. The federal government also instituted in the period of 1985-88 what appears to have been a highly successful (if much less high profile) set of consultations with the private sector. These consultations were formalized in the establishment of an International Trade Advisory Committee (ITAC), chaired by Northern Telecom chairman Walter Light, and by 15 Sector Advisory Groups on International Trade (SAGITs). Much detailed advice from the private sector reached the federal government through these groups, and in turn private sector representatives were kept informed of the Canadian position. Several provinces also had their own industry consultative mechanisms,

some more formal than others, and kept in touch with the federal ITAC and SAGITs. Further analysis of this whole area of relations is beyond the scope of this chapter, but it bears keeping in mind that Canadian trade negotiators were faced with the requirement for consultation and participation in trade policy from a broader front than just the provincial governments.

Nonetheless, from the beginning of these negotiations, it was generally accepted that many of the substantive items on the long agenda would include matters in provincial jurisdiction. Provincial subsidies, government procurement, liquor board practices, agricultural marketing boards, and regulation of services and investment were only the most prominent of the potential issues to be covered.

The federal-provincial consultation that resulted reveals a lot about the strengths and weaknesses of the consultative process, and about the limitations of intergovernmental relations—for both sides—in achieving trade policy results. This process can be described through three distinct phases: the initial phase of jockeying for position; the middle phase of smoothly running federal-provincial relations, and the final phase of brinkmanship negotiations when the federal-provincial consultation process was disrupted in the final push to get an agreement.<sup>44</sup>

The issue of the exact nature of provincial participation in the BTNs had been brewing for some months when it landed at the Annual First Ministers Conference in Halifax, November 28-29, 1985. There the first ministers managed to agree on the principle of "full provincial participation" in the BTNs, but it took until June 1986 before the meaning of that phrase became clear. The most hawkish provinces, led it would seem by Ontario and Alberta, were proposing a provincial role that would be substantially enhanced from that of the Tokyo Round.<sup>45</sup> This would be in keeping with the new era of "national reconciliation" begun with the federal election of the federal Conservatives in 1984, and by the unprecedented scope of the proposed BTN agenda. In March 1986, the provinces proposed to Ottawa a set of modalities for participation that included, among other things: the establishment by all first ministers of a joint mandate and joint control over Canada's chief negotiator; full provincial representation on the Canadian negotiating team, including the option of being "in the room" with the Americans; full participation in the negotiating strategy; and full information sharing in confidence with the federal negotiators.<sup>46</sup> At this point the federal government had already appointed chief negotiator Simon Reisman and was in the process of establishing Reisman's negotiating mandate and staffing a special

Trade Negotiations Office (TNO) in Ottawa. In any case, the federal government was not prepared to go as far as the provinces had proposed.

By June 1986 agreement had been reached on a process that had the following elements: quarterly meetings of the first ministers to review the progress of the negotiations; a single chief negotiator and a Trade Negotiations' Office responsible only to the federal government; a chief negotiator's mandate established by the federal government following consultation with the provincial first ministers; a Continuing Committee on Trade Negotiations (CCTN), chaired by the Chief Negotiator Simon Reisman, as the forum for ongoing federal-provincial consultation at the senior bureaucratic level; and a commitment to formally seeking provincial views prior to endorsing any agreement. There was no agreement on the issue of the role of provinces in the ratification or implementation of the agreement.

The results, then, of this first phase were for the federal government to achieve control over the chief negotiator and his team, which it felt was essential. The provinces obtained their minimal requirements for consultation. Provincial representatives would not be in the room, but they would have important input to the Canadian strategy and the conduct of the negotiations. This first phase, with its emphasis on process over substance, was time consuming and, had it lasted, could have seriously distracted from the basic intent to reach an agreement with the U.S. As it was, at least one senior federal official has said that during the first year of the negotiations Simon Reisman had to spend much more time with the provinces than he did with the U.S. negotiators.<sup>47</sup>

Thus, in contrast to the first phase, the second phase of the consultative process, lasting until September 1987, consisted of intense and varied intergovernmental relations over the ongoing substance of the negotiations. The key forum was the monthly meeting of the CCTN, supplemented by meetings of federal-provincial subcommittees on a few key issues involving provincial interests. In addition to these technical consultations, there were occasional briefings for provincial ministers and quarterly first ministers meetings. There were, as well, innumerable bilateral meetings of officials, phone calls, and correspondence. The key features of this stage of consultation were that, for the most part, a degree of professional trust prevailed, and information was shared in confidence. The provinces were kept informed and had an input into the substance of the Canadian negotiating position. The degree of information and input appeared to exceed that of most other domestic actors, including the private sector, other federal departments, and Parliament. Only the TNO itself, the prime

minister's office, and the special subcommittee of the federal cabinet on trade appeared to have greater access to the negotiating process.<sup>48</sup>

There were nonetheless a number of problems with this process on both sides. Provincial representatives sometimes felt that the TNO was attempting to stifle debate in the CCTN through lengthy presentations, or that they were not forthcoming on a number of issues. The federal officials could complain about the occasional leaks of information and that some provinces were not being sufficiently forthcoming about their positions on sensitive matters. These problems do not detract from the general conclusion that the process of consultation, both with officials and politicians, worked extremely well within the limitations of what consultation means. Without a full discussion and debate at each stage and on every major issue over the 18-month period preceding the final agreement, the provinces could not have been on side on the many technical issues involved in the negotiations. Without this support, Canada could not have gone forward to the Americans with an integrated Canadian position.

The last phase in the process was precipitated by Canada's halt in the negotiations and by the last-minute rescue effort at the end of September and right up to the October 3 deadline imposed by the U.S. Congress. In these last days the provinces were not consulted in any formal way, so that the 31-page *Elements of the Agreement* contained features that could not have been completely foreseen by the provinces. Chief among these was the lack of agreement on trade remedy process, except within the context (as important as it was) of a new binding dispute settlement mechanism.

Most other features of the agreement were not a surprise. The provisions with respect to the autopact, cultural programmes, investment, and energy were essentially known to the provinces as a likely outcome well before the final push. Nonetheless, it may have been the case that the full import of some of the proposed measures was not appreciated by the provincial representatives, let alone debated with the federal negotiators.

Throughout the period from the release of the preliminary agreement to the release of the detailed legal text, there were again no formal meetings with the provinces. Several bilateral meetings took place, however, which resulted in several minor compromises and concessions.<sup>49</sup>

To this sketch of the basic features of the federal-provincial process during the BTNs must be added the ongoing political debate. The federal-provincial consultative process became increasingly untenable under the

pressure of high profile opposition to the Canadian negotiating position from Ontario and Manitoba. In particular Premier David Peterson of Ontario continued to raise in public fundamental doubts about the direction of the talks, especially during an election campaign that ended in a majority victory for his party on September 10, 1987. The position of these two provinces challenged the federal government to proceed without a full provincial consensus but at the same time heightened the political leverage of the other eight provinces as sustaining supporters of the negotiations. At the end of the day, a total of eight provinces supported the agreement. (Although Prince Edward Island came out against the agreement in October 1987, an election in Manitoba on April 26, 1988 brought a more sympathetic government to power there.)

A lengthy discussion of the political economy underpinning the positions of the various provinces at this stage is beyond the scope of this chapter. However, as outlined above, the general regional position on trade interests seems to be borne out by the caution and opposition of Ontario and the enthusiastic endorsement of provinces such as British Columbia, Alberta, Saskatchewan, New Brunswick, and Newfoundland. Quebec's strong support represents the clearest turn-around from its more cautious stance during the Tokyo Round. The past decade in Quebec has seen a major transformation in the economic attitudes among business and government elites with a much more liberal approach adopted. Its pro-free trade position was pivotal in creating a majority provincial consensus in favour of the agreement.<sup>50</sup>

The issue of how many provinces supported the agreement at this stage may seem to many to have been moot. For the result of the negotiations was a free trade agreement that was surprising in how little it impinged on provincial jurisdiction when compared with the agenda during the long negotiations. The exact extent of provincial jurisdiction affected is the matter of some legal debate.<sup>51</sup> How and whether the agreement was to be implemented within provincial jurisdiction has also been an issue. Article 103 of the Free Trade Agreement (FTA) stipulates that:

The parties to this agreement shall ensure that all necessary measures are taken in order to give effect to its provisions, except as otherwise provided in this Agreement, by state, provincial and local governments.

This is the strongest "federal state" clause to which Canada has ever agreed in a trade agreement and has at least in potential much more clout than the comparable Article XXIV(12) in the GATT.<sup>52</sup> Within the main

text of the FTA, provinces are mainly affected by chapters 5 on national treatment, 7 on agriculture, 8 on wines and spirits, 9 on energy, 12 on exceptions, 14 on services, and 16 on investment. However, the last two chapters noted affect the provinces only prospectively, and discounting for the moment provisions that require future negotiation (agricultural standards, subsidies, etc.), there was very little left in terms of direct and immediate impingement on provincial jurisdiction, saving chapter 8. This begs the question about whether the federal government would have to resort to article 103.

There was nonetheless anxiety in some provincial capitals about the nature of the federal FTA implementation legislation, and the extent to which certain provinces might be forced to challenge a bill that intruded directly on provincial jurisdiction. Despite advice from some quarters to impose the FTA with the full force of the law on the provinces, the federal government took a less intrusive route in Bill C-130 (as passed, *An Act to Implement the Free Trade Agreement between Canada and the United States of America*). The bill included only what amounted to legislated warnings about federal jurisdiction and provisions for implementing the agreement in the failure of provincial measures to comply, including a specific reference to chapter 8 on wine and spirits.<sup>53</sup>

Despite the rather unintrusive nature of bill C-130, the provinces of Ontario, Alberta, Quebec, and Nova Scotia felt duty-bound to register a protest. Although no province went so far as to pass its own implementing legislation, Alberta did table a bill, and the government of Quebec issued a "decree" proclaiming the implementation of the FTA within its jurisdiction.<sup>54</sup> Ontario passed four pieces of legislation designed, it would appear, to demonstrate that FTA or no FTA, Ontario would legislate in its own interests.<sup>55</sup> These were not perceived as posing a significant challenge to the federal bill and constituted only minor irritants to the federal government. The government of Ontario essentially removed any further threat that it would not abide by the terms of the FTA when it settled with the federal government on the wines issue in March 1989.<sup>56</sup>

In contrast to Ontario, British Columbia's attorney general was quoted as saying that "we're not going to go around snivelling about provincial jurisdiction."<sup>57</sup> This probably reflected the views of the provinces that remained silent on this issue (Saskatchewan, New Brunswick, and Newfoundland), to whom the jurisdictional threat was either seen as minor, or worth suffering given the resulting agreement.

The federal government was therefore able to achieve the implementation of the FTA without formal recourse to article 103 of the FTA or



its legislated instruments in the FTA implementation bill. No province has yet challenged the federal legislation in the courts. All of this has occurred without any formal decision rules or mechanism to "ratify" the agreement by the provinces. In some circles this achievement is likened to a "revolution" in favour of federal jurisdiction. This claim seems to be premised in part on the view that by not challenging the federal legislation the provinces acquiesced in the broader prospective intrusion of their domain by the FTA. It is also premised on the assumption that a court challenge would find the entire substance of the FTA as lying within federal jurisdiction under the Trade and Commerce power. Whatever the case, it must surely be a very quiet revolution, which will only stand the test of time if it is upheld by the courts. It has certainly not diminished the provinces' appetite for involvement in trade policy.

Revolution or not, in the face of widespread public skepticism about the merits of the FTA in late 1987, the Mulroney government needed allies and got them in the support of seven provinces. This in itself should be justification for the effort exerted in involving the provinces throughout the negotiations. The consultations with the provinces were not, however, achievements in decision making. Apart from a broad political consensus from a majority of the provinces, there were no formal means used to commit the provinces to specific provisions. The limitations in this process merit further review and are discussed below.

### **The Limitations of the Role: The Softwood Lumber Dispute**

Much of trade policy is about settling differences. Many, though not all differences are settled by a recourse to rules that emerge from negotiations or from the accumulation of precedents on the settlement of disputes about the rules. The settlement of disputes to the satisfaction of the parties to a trade agreement ensures the stability of any trade regime. Trade disputes are the proof of the pudding. In the case of Canada, a middle power that must rely heavily on the rule of law in its trading relationships, an effective and fair dispute settlement procedure in trade policy is not only half the battle, it is an important end in itself.

No less than for trade negotiations, there is a considerable play of domestic politics in any trade dispute and in attempts to reach a settlement. Indeed, the pressure politics of a trade dispute can be considerably more focused than policy-oriented negotiations. Where trade disputes impinge directly on provincial interests or draw one or more provinces as parties into the dispute, relations with the provinces can be

critical to the successful resolution of a dispute. The history of such relationships has been ad hoc and episodic, even more so than the detailed trade negotiations described above. The difficulty in maintaining a common position and the lack of means of reaching binding decisions in the domestic side of the equation in Canada has raised questions about Canada's ability to conduct effective trade relations. An excellent case in point is the softwood lumber dispute.

Canadian exports of softwood lumber ran afoul of the United States trade remedy process for countervailing subsidies. Without going into detail, it is important to state a few salient points. American lumber producers had been losing U.S. domestic market share to Canadian producers since at least 1977; in 1982 they launched a countervail suit alleging subsidies in the Canadian production of lumber. While many federal and provincial government programs were cited in the suit, the most important point of contention was the stumpage regime in the major exporting provinces of British Columbia, Alberta, Ontario, and Quebec. The suit was lost by the U.S. producers in 1983, but taken up again in 1986, under circumstances in the United States that greatly enhanced the political leverage of the U.S. lumber interests. These circumstances were: (1) an increased concern in the U.S. over its burgeoning trade deficit, (2) a protectionist Congress (with special vulnerability on regionally concentrated interests such as the lumber sector), (3) increasing political pressures on the U.S. trade remedy process including proposed legislation to change the definition of subsidy with respect to trade in natural resources, and (4) the leverage of Congress on the U.S. administration and Canada in the start up of the bilateral negotiations towards a free trade agreement.<sup>58</sup>

There is no question that the central issue was provincial stumpage practice, with a particular focus on British Columbia where the biggest threat to U.S. producers arose. For Americans, the objective was to expose Canadian stumpage practice as a subsidy injurious to U.S. producers. For Canadians, the objective was to demonstrate not only that Canadian stumpage practices were not a subsidy under generally understood definitions of the concept, but also that U.S. attempts to redefine subsidy as any market condition dissimilar to their own constituted a protectionist device to deny the comparative advantage of imported goods. For Canada, however, there was also the broader issue of provincial control over crown resources and thus an issue of perceived sovereignty. Unfortunately for Canadian lumber producers, there was

ultimately no option but to abide by the rules imposed on its most important market.

The domestic negotiations in the first phase of the dispute, 1982-83, were relatively simple. Once the suit was launched, the Canadian government consulted broadly with the provinces and the industry. In the end, however, governments stood aside to allow a coalition of Canadian producers to fight what appeared to be a straightforward legal battle on the merits of the countervail case. The conclusion for Canada was a final negative determination of subsidy reached by the U.S. Department of Commerce in May 1983. This conclusion, however, may have come despite the lack of a coordinated response by the federal and provincial governments.<sup>59</sup> In any event, as long as the trade dispute could be handled through the legal route of the U.S. trade remedy process with an acceptable outcome for Canada, intergovernmental relations in Canada did not seem to pose a problem.

The second phase of the case posed a much greater threat to Canadian interests and made a settlement more difficult. As noted above, the renewed countervail case was pursued in the U.S. under a cloud of protectionist threats. The United States International Trade Commission announced a preliminary determination of injury from subsidized Canadian lumber on June 26, 1986. Canada was faced with several difficult issues. If not settled to some degree of U.S. satisfaction, the dispute could derail the BTNs. If the countervail suit was allowed to take its full legal course, it could set a dangerous precedent for other Canadian resource exports where resource input subsidies were arguably even more open to attack. Finally, an unsuccessful outcome from the existing countervail process could precipitate new U.S. legislation with a more protectionist definition of subsidy. These issues would have a differential impact in Canada. British Columbia had the greatest interest in seeing the dispute settled regardless of the broader consequences, while the other provinces were more inclined to pursue a course that either infringed less on their sovereignty or reduced the threat to other resource export interests. The federal government would have to pursue the national interest, which was at the very least defined as brokering the competing regional interests.

From June through to the end of 1986, the tactical issue for Canada was whether or not to seek a negotiated settlement of the dispute. There were two options. The first was a suspension agreement between the two federal governments whereby Canada would agree to take measures to nullify the effect of the preliminary countervailing duty. This would not

preclude a continuation of the legal case. The second option was for a termination agreement that would halt the legal proceedings by the industry plaintiff in the U.S. The second option was chosen to terminate the U.S. suit. The instrument, a Memorandum of Understanding (MOU) signed on December 30, 1986, raised considerable controversy in Canada. Canada agreed to collect a 15 percent export charge on softwood lumber shipped to the United States and to consult with the Americans about provincial charges designed to replace the export tax. This kept the tax revenue in Canada, while having the same effect on Canadian producers of an import duty. While not mentioned in the MOU, the implementing legislation in Canada stipulated that the export charge revenue, minus administrative costs, would be returned to the province of the originating shipment.<sup>60</sup>

Both the process by which Canada decided to negotiate a settlement and the terms of that settlement raise interesting issues about the role of the provinces in trade disputes. A fierce internal debate arose in Canada as to whether to pursue the termination agreement, culminating in a federal-provincial discussion at the Annual First Ministers Conference on the Economy, held in late November 1986 in Vancouver. While not formally on the agenda, the issue dominated the conference. The deadline for reaching a "suspension agreement" had already passed. The plodding pace of building consensus with the provinces probably meant that the option could never have been exercised. In the end, the federal government achieved the consent of nine provinces to proceed with a termination agreement. The one province that could not be a part of the consensus was Ontario. Premier Peterson argued for a continued legal contest on the merits of the case, rather than to pursue what his government perceived as capitulation to American political pressure to settle out of court. He also raised questions about the constitutionality of a proposed federal export tax. Ontario was joined in its opposition to a negotiated termination by prominent interests in the Canadian forest industry.<sup>61</sup> Industry spokesmen complained bitterly that they had been left out of the process in the effort to get provincial consensus and that the revenue interests of the provinces were being put ahead of the long-term health of the forest sector.

That the industry's views did not prevail attests both to the political clout of the provinces and the jurisdictional complexities of the dispute. Not only were the chief measures in dispute provincial policies, but the provincial crown owned the resource in the first instance. The government of British Columbia as the main culprit in the U.S. eyes, and with

the most to lose from a countervailing duty, had the ability and indeed threatened to cut an independent deal with the U.S. lumber interests. These threats went a long way to undermining any Canadian position based on fighting the good fight before the Department of Commerce.<sup>62</sup> This is not to sit in judgment on the outcome. A good case can be argued that the negotiated termination settlement indeed made the best of a bad situation. However, one can also argue that Canada might have been better served by a more cohesive front.<sup>63</sup>

If the process of domestic negotiations to settle this dispute are revealing, so too was the settlement itself. As noted above, Canadian provinces had vigorously resisted federal government taxes on resource exports throughout the 1970s and early 1980s. The federal bill implementing the MOU could have been challenged on the constitutional grounds that the real purpose of the bill was to alter provincial stumpage practices.<sup>64</sup> Regardless of the legal issues, the political issue was considerably muted by the return to the provinces of the export charge revenue and by the fact that, compared with the previous unilaterally imposed oil export tax, the lumber export tax came as a result of federal-provincial agreement. The requirement in the MOU that the United States administration be consulted on any provincial stumpage charges to replace the export tax was a more difficult problem. A side letter to the U.S. producers made it clear that the administration would fight any attempt by the provinces to use the export charge revenue to otherwise support Canadian lumber production. As Constance Hunt has written: the situation illustrates the "high cost of provincial independence in the face of protectionism and world market forces."<sup>65</sup>

Subsequent to the signing of the MOU, Canada and the U.S. agreed to the replacement stumpage regimes in British Columbia, to an exemption for the Maritime provinces and Newfoundland, and to reduced export charges for Quebec producers. Nonetheless, a uniform approach across all provinces was impossible to achieve, given the variety of crown forest management practices and the forest sector mix across Canada. Another obstacle was the policy preference of at least one province, Ontario, to have nothing to do with negotiating stumpage with the U.S. administration. The industry for its part generally has favoured the single export charge as a simpler and less costly alternative to increased stumpage. In any case, under pressure from the Canadian industry and some provinces, the federal government on September 4, 1991 exercised its option under the MOU to abrogate the deal. The U.S. administration has reciprocated by initiating once again the countervail suit and

imposing import duties. And, of course, the federal-provincial consultation process has been reconvened.

In sum, the continuing problems of the softwood lumber dispute strike at the heart of the provincial role in trade policy. The federal government cannot dictate terms to the provinces; neither can it create consensus where it does not exist. Debate among the provinces and threats of independent action by individual provinces precluded certain strategic options for Canada—either through contribution to a delayed response or by public positions that weakened the overall Canadian case. The emphasis on federal-provincial consultation can freeze out consultation with the private sector. For a time, however, a domestic solution to a very difficult trading problem was found, through a method (the export tax) that only a few years before might have provoked a bitter debate.

In reviewing the importance of the softwood lumber case to the evolving role of the provinces in trade relations, one should note in summary at least, the experience of another prominent recent trade dispute involving the provinces. The dispute over the practices of the provincial liquor boards with the European Community did not get finally resolved until late in 1988,<sup>66</sup> but the problem of provincial compliance with GATT obligations that lay at the heart of the dispute was certainly well known to the Americans throughout the bilateral negotiations and the softwood lumber dispute. Gilbert Winham contends that, in the lumber case, U.S. insistence on monitoring Canadian compliance with provincial stumpage to replace the export tax arose from their distrust that the provinces would comply with the terms of the agreement between the two federal governments.<sup>67</sup> The dismal history of the liquor boards case no doubt contributed significantly to that distrust.

When the combined experience of the lumber and liquor board cases is assessed, some basic conclusions can be stated. Federal-provincial consultations play an important role in the resolution of significant trade disputes. In the lumber case, this appeared to be at the expense of private sector consultation, which need not have been the case. Weaknesses in the process remain. These include the lack of an institutional framework for follow-up on provincial commitments, the difficulties that emerge when a common Canadian front is perforated by independent provincial action, and the continuing problem of how to achieve binding commitments for trade policy concessions within provincial jurisdiction. These issues will be discussed further in the last part of this chapter.

## TOWARDS MORE EFFECTIVE TRADE POLICY

### Summary of the Evolved Provincial Role in Canadian Trade Policy

The purpose of this chapter has been to trace the evolving role of the provinces in Canada's trade policy, with a special emphasis on relations with the United States. In so doing, the intent has been to examine the underlying causes for this role, to underline its strengths and weaknesses, and to assess the impact of federal-provincial relations on the achievement of specific trade policy objectives.

The role of the provinces in trade policy in Canada arises from both worldwide trends and a unique combination of domestic factors. The causal factors that Canada shares in common with other countries is an increasing economic interdependence. This interdependence is both the result of and a contributing factor to a broadening of trade policy far beyond the narrow confines of tariffs to embrace the now expanded role of the state in the economy. Interdependence is also a factor in the increasing role of subnational governments in the international economy, with direct and indirect impacts on trade policy. On the domestic front, Canada deals with these external factors from its unique institutional position as a federation. Canada, especially as compared with the United States, exhibits a marked degree of constitutional decentralization with respect to treaty implementation, and a much less broadly defined central government power over trade and commerce.

Canada shares with other countries, especially the United States, a significant divergence of regional interests in trade policy. Where it differs from the United States, is in how these regional interests are expressed or accommodated. In Canada the primary role of regional representation lies with the provinces, contrasting with the strong role of the Senate in the United States. The combination of a parliamentary system of government with a federal constitution means that in Canada intergovernmental relations are dominated by executives, both elected and appointed. Where Canada is especially unique is in the role that intergovernmental relations plays in the formation of trade policy. This arises in turn from the role that provinces play in representing regional interests in national matters, and from the constitutional authority over aspects of treaty implementation and over some of the content of the broadened trade policy agenda.

The evolution of this role in practice demonstrates its strengths and weaknesses for the policymaking process. Recent Canadian experience demonstrates that the role of the provinces in the "domestic negotiations" over trade policy has evolved from being one among many constituent interest groups to that of a privileged, even partnering role with the federal government. This role has generally not extended to providing provincial representatives with a seat at the trade negotiating table. Detailed consultation with the provinces during the negotiating stage for recent multilateral and bilateral trade negotiations has nonetheless become an essential ingredient to achieving effective results for Canada. The technical advice of the provincial representatives and their detailed knowledge and advocacy of local economic interests have been valuable to the development of a common Canadian position. Where there is no continuing forum for the exchange of views and information, trade policy decisions at either the federal or provincial level will not adequately take account of the obligations of interdependence. Such unilateral actions fragment the Canadian position with damaging results (there are examples of this in both the softwood lumber dispute and the liquor boards issue).

In practice, consultations with the provinces have not always been easy for federal trade negotiators to accept or to manage. Mutual professional considerations among officials and the development of trust relationships have contributed in general to effective consultation. However, on occasion the intrusion of politically motivated positions on high profile issues has prevented meaningful dialogue and input.

A more important limitation of the role of the provinces arises from the inherent limitations of federal-provincial consultation itself. Intergovernmental relations in Canada exist in a constitutional vacuum. There is practically no constitutional recognition and, partly as a result, a very rudimentary level of institutionalization of intergovernmental relations. The informal and the ad hoc characterize many federal-provincial relationships. The design of the federation emphasizes a classical division of labour, not modern interdependence.

As one illustration of this status, there are no formal rules to apply to decision making in intergovernmental relations in Canada with the exception of the constitutional amending formula (Part V of the Constitution Act, 1982). This situation applies with respect not only to relations on trade policy, but to most other areas of intergovernmental relations as well. The broader implications of this structural factor are discussed below. Here it is important to note that the lack of any rules other than consensus or unanimity in obtaining provincial consent is a constraint to



developing an effective Canadian position on trade matters. Consultation is not decision making. And even where provinces have decided to bind themselves to trade commitments, as with the 1979 Statement of Intent on liquor board practice, the lack of an enforcement mechanism was partly to blame for the ensuing trade dispute with the EC. In the absence of a more formal means of reaching binding decisions with the provinces, the federal government may be faced with the more aggressive exercise of its legal jurisdiction, which in turn could upset the balance of interests in the federal system. Some options for improving this situation are reviewed below, but it may be useful first to discuss how continuing trade policy discussions may affect those options.

### **The Continuing Trade Agenda**

The need to define the role of the provinces presents a continuing challenge in light of the current trade agenda. The prospects for the conclusion of the Uruguay Round, the unfinished business of the Canada-United States Free Trade Agreement, and the recent launch of talks towards a "North American Free Trade Agreement" (NAFTA), to include Mexico, provide a number of issues to be addressed.

In the Uruguay Round, which is scheduled for completion at the end of this year, federal-provincial consultation has become an important element in forming the Canadian position.<sup>68</sup> There are certainly a number of regionally sensitive issues, such as agriculture and textiles and clothing, where an early and detailed exchange of views with the provinces prior to the tabling of positions in Geneva may be effective in ensuring that an ongoing consensus around these positions is maintained. Thus far the negotiations have not proceeded with the highly charged political atmosphere that characterized the "free trade" debate.

At least three of the Uruguay Round agenda items may ultimately require consultations that are aimed at more than just keeping the lid on. These are government procurement, services, and investment where provincial jurisdiction may be affected directly by the results. If there is to be any substantial new liberalization in procurement practices beyond the entities listed in the 1979 code, provincial government procurement, in particular certain crown agencies such as hydro corporations, will be a prime target of our major trading partners. On services, an entirely new agreement is being considered that could go beyond the sort of prospective involvement of the provinces in the FTA. In the investment area as well, at least some of Canada's major trading partners have identified

provincial practices for inclusion in a new set of rules prohibiting trade-related investment measures. The federal government for its part will be looking to the provinces to agree to put their measures on the table, and will be considering ways and means to ensure other Contracting Parties that what is on the table can be delivered. In so doing Canada may well take on, where possible, a stronger undertaking with respect to provincial governments such as is provided by Article 103 of the FTA.

The other set of issues where the provincial role continues to present challenges is in the implementation of the FTA. The agreement mandates a whole set of further negotiations, consultations, and studies designed to elaborate upon bilateral trade rules or to tackle issues that could not be dealt with in the initial set of negotiations. These include: tariff acceleration, definition of the rules of origin, standards and phytosanitary regulations, agricultural trade, services, and, of course, subsidies and anticompetitive pricing practices.

There has been a continuing debate among the federal and provincial governments about the role of the provinces in continuing negotiations mandated by the FTA, in the dispute settlement processes of the FTA, and in general trade relations with the United States under the agreement. Agreement on a set of procedures, while welcome, does not appear to be imminent. A specified institutionalized role for provincial governments in FTA implementation would go a long way towards sustaining the momentum of provincial commitment to the FTA exhibited during its negotiation.<sup>69</sup>

Nonetheless, there are a number of issues to be overcome. The provinces want to have a role in the "political oversight" of the agreement, through the Canada-United States Trade Commission headed by the Canadian Minister of International Trade and the United States Trade Representative. This commission will play a vital role in solving minor problems before they get worse and in coordinating genuine disputes through the procedures in the FTA. The provinces want some assurance that issues of direct interest to their regions will be addressed in this process. The issue of the dispute settlement procedures is more difficult. The provinces want a mandated role in the settlement of disputes involving provincial measures and direct provincial interests. The debate with the federal government surrounds the definition of what constitutes provincial interest and the sensitive question of whether provincial representatives will be allowed to present their views directly to dispute panels. The history of the two disputes reviewed in this chapter illustrates that some sort of mandated role for the provinces may help to settle

disputes in ways that maintain an integrated Canadian position. There are also instances where the direct representation of provincial views would be useful.

The role of the provinces in the continuing negotiations over substantive rule-making is also being discussed. While chief among these are the negotiations to be completed within five to seven years on subsidies and unfair pricing, other agenda items include the negotiation of standards and phytosanitary regulations, agricultural trade practices, and the possible extension of the sectoral liberalization of services.<sup>70</sup>

The role of subnational governments on both sides of the border will once again be an important consideration in these subsidy negotiations. In Canada, recent analysis suggests that subsidy practice, at least in terms of industrial (not agricultural) subsidies, is in decline, especially at the federal level.<sup>71</sup> The fiscal policy of deficit-beset Ottawa is no doubt largely at the root of this trend, as is a growing realisation of the limitations on national governments of their ability to shape business location decisions in particular. Whether the same can be said of the provincial level is not so clear, although fiscal restraint is also important. In the United States, much of the increase in subsidy activity is occurring at the state level and increasingly so in the era of "fend-for-yourself-federalism." Thus, if this hypothesis holds that the biggest part of the nonagricultural subsidy problem in both countries lies with the subnational governments, then the prospects for agreement on a bilateral code may be slim. This conclusion is based on the assumption that the U.S. states would be most reluctant to restrict their own actions when they contribute so minimally to the direct distortion of international trade (as compared with domestic commerce) than do Canadian subsidies.

Canada would then have to weigh the advantages of a subsidy code that cuts much more deeply into Canadian than into American practice against the advantages of having no subsidy agreement at all. Depending on whether the Uruguay Round results in a more acceptable multilateral subsidies code, the steam may already have gone out of the push for a bilateral solution. Increasing concern in the U.S. for industrial policy, especially as it relates to research and development and related factors, may mean that provinces, as well as the states, will not be anxious to constrain themselves any further than is already the case with the FTA.<sup>72</sup>

Another piece of unfinished business is Canada's participation in free trade negotiations with Mexico.<sup>73</sup> Canada's chief interests in these negotiations will be to protect the bilateral relationship with the United States, although over the longer term, a truly North American free trade

area will have significant consequences for the division of labour between the three countries, and in the event of greater movement towards large regional trading blocks, may provide North America with greater flexibility than otherwise would be available. Nonetheless, Canada's entry into the U.S.-Mexico negotiations continues to raise opposition in Canada, as witnessed by the condemnation of the decision by Premier Bob Rae of the newly elected New Democratic Party government in Ontario.<sup>74</sup> The federal government has promised to work "just as closely with the provinces" on the NAFTA negotiations "as it has done in the FTA negotiations with the United States and as it is now doing in the Multilateral Trade Negotiations."<sup>75</sup>

### **Options for the Future**

The preceding discussion of the continuing agenda begs several questions about fundamental approaches to intergovernmental relations in Canada. In the face of global economic challenges it is often assumed that there are two mutually exclusive models of how to organize a Canadian response. One would dictate a centralized response by a federal government capable of acting authoritatively and without constraint to meet the global challenge. The other model would argue that the global challenge is so pervasive that it can only be met by a collaborative response of both federal and provincial governments.<sup>76</sup>

One may conceive of means by which the underlying requirements for elaborate intergovernmental relations in trade policy are avoided. Some of these involve a simplification of jurisdictional authority. The federal government's constitutional authority could yet be enhanced by judicial review to place the entire substance of existing and prospective trade agreements within the jurisdiction of Parliament. Similarly, constitutional amendment could clarify and strengthen the federal role in treaty implementation and enforcement. The regional representation role of the federal government could also be improved through constitutional reform to the Senate, for example, thus reducing the political requirement for provinces to speak out on trade matters. The device of intergovernmental disentanglement might also be of value with respect to trade and investment development, but short of constitutional amendment is unlikely to be effective in reducing the legitimate role of provinces in certain trade policy matters.

For the more immediate and practical purposes of Canadian trade policy it may be more instructive, however, to review not so much the

merits of a centralized response over a decentralized one but rather to look at differing types of intergovernmental relations that could be employed in trade matters in order to draw out possible options for the future consideration of both federal and provincial governments.

These types are organized here into three categories: (1) *unilateral action* of independent governments acting essentially alone; and two types of more collaborative intergovernmental relations: (2) *consultative and collaborative institutions and processes*, and (3) *joint decision-making institutions and processes*. In practice these three types exist along a spectrum of relations, with frequent movement along the spectrum. To demonstrate the range of available types of intergovernmental relations is not necessarily to choose one type over the other. The flexibility to choose one type over the other, in differing circumstances, may also be a virtue.

### *Unilateral Action*

There are of course many arguments against any continuation or elaboration of the consultative approach to trade policy. Michael Hart wrote in 1985 that the practice of requiring provincial consensus will lead to lowest common denominator results, will weaken federal constitutional authority, and will invite foreign influence on provincial governments. The federal government must remain the "final arbiter," according to this view.<sup>77</sup>

Unilateralism is a characteristic of competitive federalism. Under these modes of relations, the public is seen to gain from governments competing in a market place of public choice to provide various kinds of public goods.<sup>78</sup> Freedom to take unilateral action avoids many of the limitations of more collaborative forms of decision making, such as collusion, slowness, and lowest common denominator results. It enhances accountability, visibility, flexibility, and diversity.

As a broad strategy, of course, unilateralism was the primary intergovernmental policy of the federal government under Trudeau's leadership from 1980 to 1984. It has the virtues of being a more accountable, and thus more democratic form of policymaking. To the extent to which it succeeds in its goals, it can make for more effective policy. There can also be great costs. Unilateral policy decisions run enormous risks of conflict generation. This is especially the case when "double unilateralism" occurs, with actions by both levels of government that compromise or cancel out the other. In legislative terms, a govern-

ment must be sure of its jurisdictional ground and be willing to aggressively defend it. Private actors, including significant constituent interest groups, are often caught in the ensuing federal-provincial cross fire.

In trade policy, the risks are that trading partners will exploit the conflicts to the detriment of overall Canadian interests. There was evidence of this in the softwood lumber and liquor board disputes noted above, as well as the open disagreements over various items in the bilateral trade negotiations with the United States.

Unilateralism by either federal or provincial governments should be discounted as a comprehensive approach.<sup>79</sup> For the exercise of trade policy as a whole, it cannot work. The interdependence of federal and provincial governments and the broadened nature of the trade policy agenda to encompass provincial jurisdiction demand more collaborative relations. However, unilateralism may have considerable merit for individual trade policy issues. This would hold if the federal government is fairly certain that its actions cannot be canceled out by the unilateral actions of the provinces. Recent experience demonstrates for example, that in the crucial final stages of negotiations with trading partners, unilateral decisions must be made. The primary role of the federal government to account for such decisions places on it the burden to make these decisions. In the absence of more certain means of reaching binding federal-provincial decisions, the final act may have to remain with a single actor.

### *Consultative and Collaborative Institutions and Processes*

In its most extreme form, "unilateralism" can mean that governmental actors make decisions without any consultative relations with other governmental actors. In reality much of what constitutes the consultative form of intergovernmental relations is a means of improving the quality of decisions that, at the end of the day, are made in federal or provincial governments acting within their own jurisdiction. As one analyst has put it, "direct bargaining is less important, in some contexts, than parallel actions that are coordinated by independent mutual adjustments."<sup>80</sup> Indeed, the consultation process then becomes part of a broader problem-solving approach, rather than as a cockpit for confrontation. This type of process may be close to unilateral action along the spectrum but is nonetheless a qualitatively different style.

It is thus important to underline the conditions required to build constructive consultative processes. The "routinization" of consultation is

seen by many analysts as an important component in the development of professional, trustworthy, and productive relations. While the development of relations among technocrats may not be perceived by all as a positive development, there is a long history of productive trade relations by national representatives through the GATT and elsewhere, which could not be accomplished without the work of a cadre of similarly minded professionals. A similar if somewhat less refined development for intergovernmental relations on trade policy in Canada is to be welcomed. Conversely, any intergovernmental consultation that relies solely on political contacts will, not surprisingly, be incapable of reaching agreement on technical matters and will instead concentrate on political issues that are less amenable to resolution through consultation.

One suggestion is for a permanent federal-provincial trade policy secretariat modelled on the European Community's Committee of Permanent Representatives that could work on an incremental approach to selected issues.<sup>81</sup> Another, perhaps companion institution, could be a more or less permanent Council of Federal and Provincial Ministers of Trade. There are of course existing mechanisms such as the Committee on Multilateral Trade Negotiations and the occasional meetings of ministers. What may be required is an intergovernmental agreement to formalize the composition, frequency, and other modalities of these consultative bodies. (Federal and provincial governments have been attempting to reach such agreement concerning the role of the provinces in implementation and consultation regarding the Canada-U.S. FTA for several months, with no tangible result as yet.)

One potential problem in the development of routine professional intergovernmental relations is the unequal resources available to individual provinces to participate in the task. The quality of consultation depends in part on the quality of views and information exchanged. Does this put the smaller provinces, with their typically smaller bureaucratic resources, at a permanent disadvantage? There is no doubt that the largest provinces of Ontario and Quebec have bureaucratic resources to devote to trade policy analysis far beyond those of say Saskatchewan or Newfoundland. Nonetheless, size does not always matter as much as how available resources are used. A small province with a well-founded definition of its interests and an aggressive strategy of advocacy can have just as much influence in relation to its needs as have the larger provinces. Besides, provinces learn from and communicate with each other; and provincial interests are not uniformly diverse and complicated.

In intergovernmental relations, where all 10 provinces have formal equality, the weight of influence on policy can shift the Canadian position, if ever so slightly, towards the interests of the less populated regions of the country. This need not be viewed as a constraint to effective trade policy. In any case, in the context of consultation that is not decision making, the emphasis is still on influencing rather than determining policy results.

### *Joint Decision-Making Institutions and Processes*

Throughout this chapter, the problem of how to reach decisions that will bind Canadian provinces to trade commitments has been raised. From the provincial perspective, decision making is a two-way street. The more formal the requirement for a commitment on the part of the provinces, the more input the provinces should have in the decision to make that commitment. This input is met in part, but not wholly, by the consultative process.

To the extent that decision making is required of federal-provincial fora in existing arrangements, there are no decision-making rules as such. The only voting rules that apply appear to be general consensus or unanimity. There appear to be no formal means for reaching bilateral agreements, for majority voting, or for opting-out. As a result, the implicit unanimity rule promotes conservatism, as no agreement means the status quo. The single hold-out can force a lowest common denominator result or delay agreement indefinitely.<sup>82</sup>

This aspect is important because most trade policy decisions require uniform application and therefore must be binding upon all the provinces. "A non-uniform or only partially inclusive outcome" could defeat the purpose of trade regulation by creating unacceptable safe havens or spillover effects.<sup>83</sup> Not all trade policy decisions require a uniform approach, an option that is discussed more fully below. However, for uniform results, binding decisions are required. In the absence of majority decision-making rules that would bind all governments, unanimity thus becomes the operative rule.

Intergovernmental relations with majority decision-making rules could produce binding results for trade policy through two basic means: a ratification procedure involving the provinces and the use of intergovernmental agreements.

The ultimate expression of provincial input would be "ratification." The concept of ratifying trade agreements is not part of current Canadian



constitutional practice. Treaties achieved by royal prerogative in Canada do not require ratification. Legislatures become involved only to implement treaties. However, Canadian practice might be modified in order to require treaties to be ratified, as a means to strengthening the legitimacy of public consent. When this has been proposed, such as by the "Macdonald" Commission in 1985, it has usually been a part of a broader effort to ensure that the ratification process has the end result of giving treaties the full force of law in both federal and provincial jurisdiction.

There are a number of different (although not mutually exclusive) options. The first would be to require, by constitutional amendment, that treaties only have effect on provincial jurisdiction if they receive the support of the majority of provincial legislatures (usually invoking the general amending formula of the *Constitution Act, 1982*, which requires a two-thirds majority with 50 percent of the population).<sup>84</sup> The second option would see the provincial legislatures bypassed and instead require ratification by a reformed Senate that would more effectively represent the provinces than the current Senate does. This is the practice in the United States and the Federal Republic of Germany.<sup>85</sup> Finally, a more complicated proposal has been made to establish a "Federal-Provincial High Commission on Treaties and International Agreements," delegated with "full powers to negotiate, conclude and sign for and on behalf of Canada, all treaties."<sup>86</sup>

Of more immediate potential for reaching agreement on binding decisions is the intergovernmental agreement. Here again, there is a legal constraint. Intergovernmental agreements in Canada do not have any constitutional status except where they have been expressly entrenched by constitutional amendment. Otherwise, there has been very little experience in enforcing intergovernmental agreements, save where they are contracts enforceable by civil law (which may not always be applicable). Legal scholarship suggests, however, that federal-provincial agreements could be made more binding through the increased use of contractual language in drafting, through provisions for adjudication, mirror legislation, and other devices.<sup>87</sup>

One of the virtues of intergovernmental agreements is their flexibility. They can be the means for achieving unanimity; they can also represent bilateral or regional understandings. This latter option need not always be a constraint on trade policy. There are numerous instances where uniformity of commitments across all provinces need not be the rule. Trade agreements are replete with special exceptions, grandfathering, and

unique circumstances. Canadian constitutional and intergovernmental practice is similarly marked by a flexibility with respect to bilateral or regional arrangements, including "opting-out."<sup>88</sup> There is no reason why trade concessions need always impinge on all provinces uniformly. This is especially so in Canada where four provinces (Ontario, Quebec, British Columbia, and Alberta) are responsible for 80 percent of all trade. Trading partners may well be satisfied with concessions from these four provinces, while some or all of the smaller provinces could be left out. This assumes of course that the concessions at issue do not involve externalities or mobile factors of production that could vitiate the concessions. It also assumes that the exceptions arise for legitimate reasons, and that the costs and benefits of concessions are balanced overall. Otherwise, political consensus to proceed in such a fashion would never be forthcoming. Nonetheless, once flexibility is recognized as an operating principle, the chances of reaching binding agreements, and avoiding a "joint decision trap" are increased.

The purpose of these comments on reaching binding decisions is not to recommend any particular reform proposal. Rather, the objective is to present a range of options from which unique and changing circumstances will dictate the appropriate choice. The point remains, however, that Canada has not yet come to terms with the important issue of reaching binding commitments for all the jurisdictions of our federation in the broadened context of trade policy. The interdependent environment of both our global trading relations and Canadian federalism demands that we do better.

## CONCLUSION

The case of the evolving role of the Canadian provinces in Canada's trade relations with the United States raises a number of questions about the ability of subnational governments in North America to control their economic destiny. The Canadian system of government—both parliamentary responsible government and the federal system—has contributed to an aggressive role for the provinces in national economic policy formation.

This chapter demonstrates that the Canadian provinces have assumed a privileged and in some respects partnering role with the federal government in trade policy, as illustrated by recent comprehensive trade negotiations and individual trade disputes. From the perspectives of the provinces, this role constitutes a minimum of control and influence upon

an area of policy that in turn affects their ability to mediate the effects of the global economy on their territories.

This role has also, in general, improved the ability of the Canadian government to confidently represent diverse regional interests and to maintain a political consensus for trade policy objectives. However, the evolved role of the provinces suffers from occasional lapses in coordination damaging to Canadian interests and from a lack of an institutional framework to reach decisions on trade policy that bind both federal and provincial governments.

The loss of monopoly control by the federal government over trade policy and the gained role of the provinces cannot be assessed in zero-sum terms. Both orders of government continue to lose sovereignty to the interdependent world community. Nonetheless, Canada has sought and achieved some rather remarkable trade policy objectives in the past two decades. This has included a strong protection of Canadian interests and general advocacy of the overall multilateral trading system through the Tokyo and Uruguay Rounds, as well as the negotiation and implementation of a comprehensive bilateral free trade agreement with the United States. In the final analysis, and despite some limitations in the process, Canada has maintained a domestic consensus for these trade objectives at home. There is no compelling evidence that the provinces' role has significantly reduced the effectiveness of Canadian policy in achieving these objectives.

The limitations remain, however, and have been illustrated in particular by key trade disputes involving the provinces, such as the liquor boards and softwood lumber issues. The final part of this chapter proposes a number of ways to improve upon future intergovernmental relations in trade policy. These include maintaining the flexibility to take unilateral action where appropriate; to institutionalize the existing consultative and collaborative processes; and to institute means to reach final decisions on certain trade policy matters that would be binding on federal and provincial governments.

A continued reliance and indeed institutionalization of intensive intergovernmental relations will not be everyone's preferred option. However, short of constitutional amendment to both strengthen the federal government's jurisdiction over trade and treaty matters, and to improve its ability to represent regional interests, the evolved role of the provinces is here to stay. From the provinces' perspective, the role is the least that can be sought in an economic and policy environment that is remorselessly reducing their room to manoeuvre. When compared with the more

limited role played by U.S. states, at least in this particular area of policy relations, the Canadian provinces have clearly taken advantage of the peculiarities of the Canadian system. The impetus to assume roles in the international economy, and thus to mediate its effects at home, is a common factor. Within the confines of each country's evolving political system, creative responses to the challenge will continue to be found.

## NOTES

<sup>1</sup>For the general literature on the role of constituent units, or as often referred to as "subnational" actors, in international relations see the contributions by Daniel Elazar, Ivo Duchacek, and Earl Fry in I. Duchacek, D. Latouche, and G. Stevenson, eds., *Perforated Sovereignities and International Relations: Trans-Sovereign Contacts and Subnational Governments* (New York: Greenwood Press, 1988); and Hans J. Michelmann and Panayotis Soldatos, eds., *Federalism and International Relations: The Role of Subnational Units* (Oxford: Clarendon Press, 1990). See also Duchacek's *The Territorial Dimension of Politics: Within, Among and Across Nations* (Boulder: Westview Press, 1986), Chs. 8, 9, and 10; and his *Towards a Typology of New Subnational Governmental Actors in International Relations* (Berkeley: Institute of Governmental Studies, 1987). For a broader perspective on the multiple roles of non-nation-state actors in the international arena see Robert Keohane and Joseph Nye, *Transnational Relations and World Politics* (Cambridge: Harvard University Press, 1972) and their "Transgovernmental Relations and International Organizations," *World Politics* 27:1 (1974): 39-62.

<sup>2</sup>To the author's knowledge there is no definitive comparative review of trade policymaking in federal states. The author has elsewhere provided a cursory survey comparing Canada's provinces in trade policymaking with the federal systems of Australia, Germany, and the United States. See "The Evolving Role of the Provinces in Canada's Trade Policy" in D. M. Brown and M. G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston: Institute of Intergovernmental Relations and Institute for Research on Public Policy, 1991), 81-128. The context for constituent government involvement in the external trade policy and several federal countries, among other aspects of international relations, has been most recently surveyed in Michelmann and Soldatos, eds., *Federalism and International Relations: The Role of Subnational Units*.

<sup>3</sup>For a general overview see Kim Nossal, *The Politics of Canadian Foreign Policy*, 2d ed. (Scarborough: Prentice-Hall, 1989), Ch. 9; and Elliot J. Feldman and Lily Gardner Feldman, "The Impact of Federalism on the Organization of Canadian Foreign Policy," *Publius*, vol. 14, no. 4 (1984), reprinted in R. D. Olling and M. W. Westmacott, *Perspectives on Canadian Federalism* (Scarborough: Prentice-Hall, 1988), 257-78.

<sup>4</sup>The term "global village" was first coined by Marshall McLuhan. For a good overview of the concept of interdependence see Sylvia Ostry, *Interdependence: Vulnerability and Opportunity* (Washington: The Per Jacobsson Foundation, 1987).

<sup>5</sup>Thomas A. Levy quoted in Ivan Bernier and André Binette, *Les provinces canadiennes et le commerce international* (Quebec: Centre québécois des relations internationales/I.R.P.P., 1988), 8. The translation is my own. See also "introduction" to this work, 3-14.

<sup>6</sup>For a more complete discussion of these roles, a survey of the academic literature related to them and a case study of the evidence in respect of the Province of Alberta, see the author's unpublished paper "Canada's Provinces in the International Economy: A Survey of the Field," presented to the Nelson A. Rockefeller Conference on "Comparative Federalism: Changing Theory and Practice in Adaptive Canadian and American Federal Systems," Dartmouth College, June 22-25, 1989.

<sup>7</sup>Duchacek's 1986 work, *The Territorial Dimension of Politics*, referred throughout Chapter 8 to "permeable" sovereignties and the "percolation of boundaries." *Perforated Sovereignties* is the title of a collection of articles from a conference on this general theme held in November 1986. See also Duchacek's chapter entitled "Perforated Sovereignties: Towards a Typology of New Actors in International Relations" in Michelmann and Soldatos, eds.

<sup>8</sup>For the rise of nontariff barriers from a Canadian perspective see John Quinn and Phillip Stayton, eds., *Non-Tariff Barriers After the Tokyo Round* (Montreal: I.R.P.P., 1982); and Frank Stone, *Canada, the GATT and the International Trading System* (Montreal: I.R.P.P., 1984) Ch. 15; and Fred Lazar, *The New Protectionism: Non-Tariff Barriers and the Effects on Canada* (Toronto: Lorimer, 1981).

<sup>9</sup>For differing perspectives on the debate about whether institutional factors or societal determinants have had a greater effect on the federal system in Canada, see reprinted articles by Alan C. Cairns, Garth Stevenson, and R. A. Young, Phillipe Faucher and André Blais in Olling and Westmacott, *op. cit.*, 103-63. A balanced interpretation is provided by Donald Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1987), 3-11. A significant attempt at theoretical synthesis is provided in Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism*, vol. 71 of the *Collected Research Studies of the Royal Commission on the Economic Union and Development Prospects for Canada* (Toronto: University of Toronto Press, 1990).

<sup>10</sup>See Ronald A. Shearer, "Regionalism and International Trade Policy" in J. Whalley, ed., *Canada-United States Free Trade, Collected Research Studies of the Royal Commission on the Economic Union and Development Prospects for Canada*, vol. 11, (Toronto: University of Toronto Press, 1985), 325-66.

<sup>11</sup>Smiley, *The Federal Condition*, 83-87. The term first appeared in his *Canada in Question: Federalism in the Seventies* (Toronto: McGraw-Hill Ryerson, 1972). A comparative analysis of the concept in Canada and other countries is provided in R. L. Watts, *Executive Federalism: A Comparative Analysis*, Research Paper 26 (Kingston: Institute of Intergovernmental Relations, 1989).

<sup>12</sup>A good general overview of the constitutional law issues related to Canadian external trade policy was provided for the (Macdonald) Royal Commission on the Economic Union and Development Prospects for Canada in 1985; see F. Scott Fairley, "Constitutional Aspects of External Trade Policy" in M. Krasnick, ed., *Case Studies in the Division of Powers*, vol. 62 (Toronto: University of Toronto Press, 1986), 1-51. See also Ivan Bernier and André Binette, *Les provinces canadiennes et le commerce international* (Quebec: Centre québécois de relations internationales, 1988), Ch. 5; and John Whyte "Federal Powers over the Economy: Finding New Jurisdictional Room," *Canadian Business Law Journal*, vol. 13 (1987).

<sup>13</sup>*A.G. Can. v. A.G. Ont. (Labour Conventions)*, [1937] A.C. 326 (P.C.).

<sup>14</sup>John Quinn, "Federalism and Foreign Economic Relations," *Canada-United States Law Journal*, vol. 10 (1985): 197-219.

<sup>15</sup>Fairley discusses this concept of "balance" in "Constitutional aspects of External Trade Policy," 1-2. He cites two articles by W. R. Lederman as insightful in this regard: "The Balanced Interpretation of the Federal Distribution of Legislative Powers in Canada" (1965), and "Unity and Diversity in Canadian Federalism: Ideals and Methods of Moderation" (1975). Both are reprinted in W. R. Lederman, *Continuing Canadian Constitutional Dilemmas* (Toronto: Butterworths, 1981).

<sup>16</sup>On the legacy of the National Policy see G. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, 3d ed. (Toronto: Gage, 1989), 75-81; see also articles by Paul Phillips, David E. Smith, and T. W. Acheson in D. J. Bercuson, ed., *Canada and the Burden of Unity* (Toronto: Macmillan, 1977); P. M. Leslie, *Federal State, National Economy* (Toronto: University of Toronto Press, 1987), 4-7; and *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, vol. 1 (Ottawa: Minister of Supply and Services, Canada, 1985), 213-24.

<sup>17</sup>For a discussion of the rise of provincial governments as primary representatives of regional interests see Smiley, *The Federal Condition*, 85-87; see also Gordon Robertson "The Role of Interministerial Conferences in the Decision-Making Process," in R. Simeon, ed., *Confrontation and Collaboration—Intergovernmental Relations in Canada Today* (Toronto: Institute of Public Administration of Canada, 1979), 78-88; and Simeon and Robinson, Chs. 9 and 10.

<sup>18</sup>See D. V. Smiley and R. L. Watts, *Intrastate Federalism in Canada* (Macdonald) Royal Commission, vol. 39 (Toronto: University of Toronto Press, 1985), esp. Ch. 4.

<sup>19</sup>This point has been emphasized by Feldman and Feldman, "The Impact of Federalism on the Organization of Canadian Foreign Policy."

<sup>20</sup>See Watts, *Executive Federalism: A Comparative Analysis*.

<sup>21</sup>See John M. Kline, "A New Federalism for United States Foreign Policy," *International Journal*, vol. 41, no. 3 (Summer 1986): 526.

<sup>22</sup>For a discussion on federalism and international economic relations see John Kline's chapter in this volume. See also Earl Fry "The Impact of Federalism on the Development of International Economic Relations: Lessons from the United States and Canada" in *Australian Outlook: The Journal of International Affairs*, vol. 43 (April 1989): 16-35. For a discussion of U.S. trade policymaking there are a number of useful sources: see especially Stephen D. Cohen, *The Making of United States International Economic Policy*, 3d ed. (New York: Praeger, 1988); I. M. Destler, *American Trade Politics: System Under Stress* (Washington: Institute for International Economics, 1986); and Gilbert R. Winham, *International Trade and the Tokyo Round Negotiations* (Princeton: Princeton University Press, 1986).

<sup>23</sup>This is the thesis developed very effectively by Winham in *International Trade and the Tokyo Round Negotiations*, esp. Ch. 8.

<sup>24</sup>The periodical *International Canada*, published for the Department of External Affairs from 1970 to 1982 by the Canadian Institute of International Affairs, provides a useful and comprehensive summary of Canada's international relations. The summary of events in this paper is largely drawn from this source. After 1982, "International Canada" became a supplement to *International Perspectives* and was written in-house in the department. In its latter form it is much less useful as a source of information of provincial involvement in international affairs.

<sup>25</sup>See *Report of the Royal Commission on the Automotive Industry* (Ottawa: Queen's Printer, 1961). The conclusion about Ontario's lack of involvement in the negotiation of the autopact is substantiated by interviews with federal and provincial officials undertaken by Donald Padget in research for a masters thesis in the Department of Political Studies at Queen's University, entitled "Canadian Federal-Provincial Relations Regarding the Negotiation and Implementation of the Canada-United States Free Trade Agreement," January 1991.

<sup>26</sup>See John Kirton, "The Politics of Bilateral Management: The Case of the Automotive Trade," *International Journal*, vol. 36 (1980-81); and Paul Wonnacott, *United States and Canadian Auto Policies in a Changing World Environment* (Canadian-American Committee, 1987).

<sup>27</sup>See Hon. W. Darcy McKeough, Treasurer of Ontario, *Ontario Budget 1976*, Supplementary Budget Paper "Performance Under the Auto Pact: An Ontario Perspective."

<sup>28</sup>James Groen has pointed out the significance of the B.C. example. See his masters thesis at Simon Fraser University, "Provincial International Relations: Case Studies of the Barrett and Vander Zalm Governments in British Columbia," January 1991, 82-99.

<sup>29</sup>See *Weathering the Storm: Canadian-U.S. Relations, 1980-83* (Canadian-American Committee, 1985), 23-42.

<sup>30</sup>This view is reinforced by other assessments, such as Sean Riley, "Federalism and Canadian Trade Policy: The Early Days of the Mulroney Government" in T. Keating and D. Munton, eds., *The Provinces and Canadian Foreign Policy*, proceedings of a conference, University of Alberta, March, 1985, 45-46; and Michael Hart, *Canadian Economic Development and the International Trading System: Constraints and Opportunities*, Collected Research Studies of the (Macdonald) Royal Commission, vol. 53 (Toronto: University of Toronto Press, 1985), 73-77.

<sup>31</sup>This conclusion is supported by interviews undertaken by Donald Padgett for his thesis, "Canadian Federal-Provincial Relations."

<sup>32</sup>GATT, *Text of the General Agreement*, Geneva, 1986.

<sup>33</sup>Bernier and Binette, *Les provinces canadiennes et le commerce international*, 107-08; Fairley, 25-29.

<sup>34</sup>Gilbert R. Winham "Bureaucratic Politics and the Canadian Trade Negotiation," *International Journal*, vol. 34 (Winter 1978-79): 73.

<sup>35</sup>For a complete overview of the Tokyo Round negotiations and its implications from a Canadian perspective, see Frank Stone, *Canada, the GATT and the International Trade System*, Ch. 15.

<sup>36</sup>The analysis of the process of federal-provincial relations in the Tokyo Round is drawn mainly from Gilbert R. Winham, "Bureaucratic Politics," 64-89. For reinforcing comments see Hart, *Canadian Economic Development*; Riley, "Federalism and Canadian Trade Policy" and the (Macdonald) *Report*, vol. 1, 368-73; and Winham's *International Trade and the Tokyo Round Negotiations*, 332-42.

<sup>37</sup>Winham, "Bureaucratic Politics," 76.

<sup>38</sup>*Ibid.*, 79-82.

<sup>39</sup>Winham, *International Trade and the Tokyo Round*, 340.

<sup>40</sup>For a general discussion of this broader debate see Douglas M. Brown and Julia Eastman, with Ian Robinson, *The Limits of Consultation: A Debate Among Ottawa, the Provinces and the Private Sector on an Industrial Strategy* (Ottawa: Science Council of Canada and Institute of Intergovernmental Relations, 1981).

<sup>41</sup>For discussion of "federal state clauses" see Bernier and Binette, 129-34.

<sup>42</sup>*Report*, vol. 3, 153; see also vol. 1, 368-73.

<sup>43</sup>Winham, *International Trade and The Tokyo Round Negotiations*, 347-48.

<sup>44</sup>The following discussion is based on the author's article "Canada-U.S. Free Trade—The Federal-Provincial Consultation Process," in P. M. Leslie and R. L. Watts, eds., *Canada: The State of the Federation 1987-88* (Kingston: Institute



of Intergovernmental Relations, 1988), 77-93; supplemented by research undertaken by Donald Padget, cited above.

<sup>45</sup>See for example, the Ontario proposal of November 1985 summarized in David Barrows and Mark Boudreau, "The Evolving Role of the Provinces in International Trade Negotiations" in Allan M. Maslove and Stanley L. Winer, eds. *Knocking on the Back Door: Canadian Perspectives on the Political Economy on Freer Trade with the United States* (Ottawa, I.R.P.P., 1987), 135-50.

<sup>46</sup>See Brown, "The Federal-Provincial Consultation Process," 82. Based on correspondence from Premier Donald Getty of Alberta, to Prime Minister Mulroney in March 1986.

<sup>47</sup>See remarks made by Alan Nymark at a conference held at Mont Gabriel in March 1990, in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges*, 294-95.

<sup>48</sup>This is the view of many of the participants, including key federal officials. See Brown, "The Federal-Provincial Consultation Process," and interviews conducted by Donald Padget.

<sup>49</sup>Brown, "The Federal-Provincial Consultation Process," 1988, 90-91.

<sup>50</sup>For a convincing analysis of the rise of "market nationalism" in Quebec and the support for free trade, see T. J. Courchene, *What Does Ontario Want?* (Robarts Centre, York University, 1989).

<sup>51</sup>The Ontario government's position is set forth in Attorney General for Ontario, *The Impact of the Canada-U.S. Trade Agreement: A Legal Analysis*, May 1988; see also article by "Anonymous," "Canada-U.S. Free Trade: The Constitutional Issues" in Leslie and Watts, *Canada: The State of the Federation*, 1987-88, 39-55; and articles by Marilyn Pilkington, F. Scott Fairley, Dale Gibson, and Ivan Bernier in Marc Gold and David Leyton-Brown, eds., *Trade-Offs on Free Trade: The Canada-U.S. Free Trade Agreement* (Toronto: Carswell, 1988), Ch. 4, 89-129.

<sup>52</sup>For commentary on this point see "Anonymous," 51-53; Bernier and Binette, 190-95; and M. Pilkington in Gold, ed., 96-97.

<sup>53</sup>See "Anonymous," 44-47.

<sup>54</sup>Draft Bill 62, Free Trade Implementation Act of the Alberta Legislature was tabled in June 1988 but died with the end of the legislative session. On June 15, 1988, the government of Quebec issued decree No. 944-88, by order-in-council, "Regarding the Free Trade Agreement between Canada and the United States."

<sup>55</sup>The four Ontario enactments were: The Independent Health Facilities Act; an amendment to the Power Corporation Act; an amendment to the Wine Content Act; and an amendment to the Water Transfer Control Act.

<sup>56</sup>Ontario agreed to phase out discriminatory pricing practices on U.S. wines as stipulated in the FTA, as part of a total package of measures that included

settlement of the GATT liquor board dispute and adjustment assistance for the wine industry.

<sup>57</sup>*Vancouver Sun*, May 26, 1988.

<sup>58</sup>These developments are discussed in Michael B. Percy and Christian Yoder, *The Softwood Lumber Dispute and Canada-U.S. Trade in Natural Resources* (Ottawa: Institute for Research on Public Policy, 1987), Ch. 5. For a good discussion of the changing nature of the United States' trade remedy process in 1986-87, see Shirley Coffield, "United States-Canada Natural Resources Trade: Sources of Conflict/Prospects for Agreement" in J. Owen Saunders, ed., *Trading Canada's Natural Resources* (Toronto: Carswell, 1987), 121-53. See also F. J. Anderson and Robert D. Cairns, "The Softwood Lumber Agreement and Resource Politics," *Canadian Public Policy*, vol. 14(2): 186-96 (1988); and Ch. 4 of Leyton-Brown, *Weathering the Storm*.

<sup>59</sup>See Fairley, "Constitutional Aspects of External Trade Policy," 15-18; Percy and Yoder, 81-85; and Leyton-Brown, *Weathering the Storm*, 55. There seems to be some confusion about whether the industry in Canada got involved because governments were either unwilling or incapable of doing so, or whether the governments thought that leaving the legal field to the industry was the best way to avoid raising political hackles in Washington.

<sup>60</sup>For a discussion of the Softwood Lumber Products Export Charge Act, see Constance Hunt, "Jurisdiction over Natural Resources Trade in Canada," in Saunders, ed., *Trading Canada's Natural Resources*, 253-79, especially, 264-68.

<sup>61</sup>See Peter Foster, "Stumped," *Saturday Night*, vol. 102, no. 7, July 1987.

<sup>62</sup>This view is supported by comments made by Robert Herzstein, a U.S. trade lawyer prominent in the case, at a conference at Mont-Gabriel in March 1990. See Brown and Smith, eds., 139-40.

<sup>63</sup>For a discussion on these points see Percy and Yoder, 126-30; Foster, Hunt, and Richard Simeon, "Federalism and Free Trade" in P. M. Leslie, ed., *Canada: The State of the Federation 1986* (Kingston: Institute of Intergovernmental Relations, 1987), 189-212.

<sup>64</sup>See Hunt.

<sup>65</sup>*Ibid.*

<sup>66</sup>For a more complete discussion see the author's paper "The Evolving Role of the Provinces in Canada's Trade Relations" in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* 81-128.

<sup>67</sup>Winham, in Maslove and Winer, *op. cit.*, 130, 134.

<sup>68</sup>The following discussion is drawn in part from the author's article "Canadian Federalism and Trade Policy: The Uruguay Round Agenda," in R. L. Watts and D. M. Brown, eds., *Canada: The State of the Federation 1989* (Kingston: Institute of Intergovernmental Relations, 1989), 211-35.

<sup>69</sup>For a discussion of the type of provincial proposals being put forward for institutionalizing the role of the provinces in FTA implementation, see panel

comments by Wayne Clifford, Carl Grenier, and David Barrows in Brown and Smith, eds.

<sup>70</sup>For a discussion see Michael Hart, "The Future on the Table: The Continuing Negotiating Agenda under the Canada-United States Free Trade Agreement," in R. Dearden, M. Hart, and D. Steger, eds., *Living With Free Trade: Canada, The Free Trade Agreement and the GATT* (Ottawa, IRPP, 1989).

<sup>71</sup>See Jean-Francois Bence and Murray G. Smith, "Subsidies and Trade Laws: The Canada-United States Dimension," *International Economic Issues*, April-May 1989, Institute for Research on Public Policy.

<sup>72</sup>For a discussion of these latter industrial policy issues see Peter Morici, *Life After Free Trade: U.S.-Canadian Commercial Relations in the 1990s* (forthcoming, Institute for Research on Public Policy).

<sup>73</sup>For a somewhat bullishly pro-free trade discussion of the Canadian perspective on free trade with Mexico see Michael Hart, *A North American Free Trade Agreement: The Strategic Implications for Canada* (Ottawa: Institute for Research on Public Policy and Centre for Trade Policy and Law, 1990.)

<sup>74</sup>See "Canada Joins Trade Talks" *Globe and Mail*, Sept. 25, 1990.

<sup>75</sup>Hon. Michael Wilson, *News Release* no. 101, April 26, 1991.

<sup>76</sup>See R. Simeon, "Free Trade and Federalism," and his "Global Economy/Domestic Society: Competing Challenges to Governance in Canada," K. L. Brownsey, ed., *Canada-Japan: Policy Issues for the Future* (Halifax: I.R.P.P., 1989).

<sup>77</sup>Hart, *Canadian Economic Development*, 75.

<sup>78</sup>There is an extensive Canadian literature on "competitive federalism." For a classic exposition see Albert Breton, "Supplementary Statement" in *Report of the Royal Commission on the Economic Union*, vol. 3, 486-526; and his *Centralization, Decentralization and Intergovernmental Competition*, Reflections no. 4, (Kingston: Institute of Intergovernmental Relations, 1990). For an insightful recent comparison of the effect of intergovernmental rules in competitive versus collaborative relations, see Martin Painter "Intergovernmental Relations in Canada: An Institutional Analysis," *Canadian Journal of Political Science* 24:2 (June 1991): 269-88.

<sup>79</sup>For a discussion of the merits and drawbacks of "unilateralism" see Peter M. Leslie, *Federal State: National Economy* (Toronto: University of Toronto Press, 1987), Ch. 5; Kenneth McRoberts, "Unilateralism, Bilateralism and Multilateralism: Approaches to Canadian Federalism," in R. Simeon, ed., *Intergovernmental Relations* (Macdonald Commission Research Studies), vol. 63 (Toronto: University of Toronto Press, 1985), 71-129.

<sup>80</sup>Painter, *op. cit.*, 24.

<sup>81</sup>Fairley, "Constitutional Aspects of External Trade Policy," 32-34.

<sup>82</sup>See Painter.

<sup>83</sup>*Ibid.*, 278.

<sup>84</sup>See (Macdonald Commission) *Report*, vol. 3, *op. cit.*, 421, 467-8; see also 151-56.

<sup>85</sup>This option was proposed, among others, by the Canadian Bar Association in its 1978 report *Towards A New Canada*.

<sup>86</sup>George J. Szablowski, "Treaty-Making Power in the Context of Canadian Politics: An Exploratory and Innovative Approach," in C. Beckton and A. W. MacKay, eds., *Recurring Issues in Canadian Federalism* (Macdonald Commission Studies, vol. 57) (Toronto: University of Toronto Press, 1986), 171-74.

<sup>87</sup>See John Whyte, "Issues in Federal-Provincial Co-operation," in J. Owen Saunders, ed., *Managing Natural Resources in a Federal State* (Toronto: Carswell, 1988); for a full discussion of this topic see Steven A. Kennett, *Interjurisdictional Water Resource Management in Canada: A Constitutional Analysis* M.M.L. Thesis, Queen's University, 1989; Ch. 3, Part V; 129-64.

<sup>88</sup>For a discussion of the merits of departing from uniformity and unanimity in decision making see Painter, *op. cit.*, and McRoberts, *op. cit.*

# *The Routinization of Cross-Border Interactions: An Overview of NEG/ECP Structures and Activities*

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## THE NEG/ECP: INTRODUCTORY REMARKS

It is no easy task to orchestrate the activities of an institution like the Annual Conference of New England Governors and Eastern Canadian Premiers (NEG/ECP) whose membership is made up of entities so diverse in governance structures, norms, and customary practices as Canadian provinces and U.S. states. States and provinces have distinctive structures, constitutional jurisdictions, and political cultures that can substantially complicate the search for areas of common transborder initiatives. The mere fact that states operate with bicameral legislatures combined with separation of legislative from executive powers, as distinguished from unicameral Westminster model provinces, does circumscribe the range of possible "hands-across-the border" collaborative efforts as well as the depth of what can be accomplished. Further complicating the task of the NEG/ECP is the fact that each government within the two neighboring federations constitutes a combination of distinctive political interests in relation to all other sister states and provinces as well.

The roles of governors differ fundamentally from those of premiers. Due to the separation of the legislative from the executive branches of government combined with the further dispersal of powers due to bicameralism, governors are normally prone to lead by persuasion and legislative craftsmanship. On the other hand, premiers provide leadership through control of their respective executive councils (cabinets) and unicameral legislatures. Since responsibility for both policy initiation and implementation tends to be concentrated in the hands of premiers, they

themselves meet annually in June alternating between a New England and "Eastern Canada" location. Almost invariably, the NEG/ECP enables each annual conference host to showcase the attractiveness of tourist sites. "Eastern Canada" is arbitrarily defined to include Quebec but not Ontario, just as New England does not include New York. Quebec became a charter member largely at the behest of the New England states; in return, Newfoundland was added at the insistence of the Maritime provinces. For some purposes, the area covered by the NEG/ECP is defined as consisting of three distinctive regions: New England, Quebec, and Atlantic Canada (e.g., the Tri-Regional Economic Cooperation Committee [TREC]); in other respects as two regions (e.g., a binational staff consisting of the ECPS and NEGEC Secretariats serving the binational Coordinating Committee [CC]); and in still other respects as one contiguous international region sharing common concerns (e.g., trade).

During the first few years after 1973, emphasis was placed on informal exchanges and personal contacts. No formal minutes whatsoever were taken of the first five annual conferences. Subsequently, more "activist" governors and premiers such as Kenneth Curtis (Maine) and Richard Hatfield (New Brunswick) successfully insisted on heavy substantive agendas; and an unofficial record of premiers/governors discussions was kept. There has also been much preoccupation with flags, protocol, name tags, and courtesies as well as socializing at cocktails, receptions, and the like. These social meetings outside a formal setting have in fact produced greater familiarity with each others' concerns; and more frequent contacts between governors and premiers as well as their political aides and line bureaucratic subordinates have often been engendered by the annual conferences. Over time, these transfrontier horizontal webs of communication in turn have substantially contributed to important formal agreements such as the export of hydro-electricity from Quebec through the New England Energy Pool (NEEPOOL), a consortium of more than 85 private New England utility firms. This is not to say that accords such as the above could never have occurred without the existence of the annual conference. Rather, the NEG/ECP has facilitated serious and ongoing study and consultation regarding regional issues and identification of potentially compatible and convergent interests between states and provinces. This has sometimes produced tangible results.

Analysis of the backgrounds of the state and provincial delegates who have attended the June annual conferences clearly indicates that some jurisdictions, particularly Quebec, attach far more importance to the

deliberations than others, such as Rhode Island or Newfoundland. This is partly a function of Quebec's size relative to other member jurisdictions, its acknowledgment of economic complementarity *vis-à-vis* New England in the sphere of energy, as well as its ambiguous constitutional status within the Canadian federation constantly embroiled in a process of redefinition since 1977, which impels it, irrespective of political party in power, to seek to project an international personality distinctive from that of Canada. Other than the host jurisdiction, the greater the perceived salience of the NEG/ECP, the more important the portfolios of the state and provincial government delegates; and the greater the number of delegates. The meetings provide a forum to initiate and reinforce contacts between regional state and provincial counterpart politicians and bureaucrats. They also provide an additional legitimate avenue within the federal system of the other country to convey state or provincial concerns to these foreign central governments through the medium of this flexible strategic alliance between six U.S. and five Canadian governments formed to achieve specific objectives.

Some nongovernmental organizations (NGOs) with transnational agendas both respond to and attempt to influence the evolving habits of association between states and provinces. Transsovereign contacts serve as a supplementary means whereby NGOs try to goad central as well as state and provincial governments in both countries to joint action on matters of particular benefit to specific NGOs. Faced with complex transborder regional issues such as economic development, which at least partly fall under semisovereign state-province jurisdiction, inertia often marks the behavior of central governments. This is a consequence of the sheer volume of persons, pollutants, and products crossing extremely porous intra- and international borders in and between Canada and the United States—too complex and too numerous for anyone or even several levels of government to manage on their own. Hence, the NEG/ECP provides a forum for both transnational and transgovernmental relations because solutions to transborder regional problems require not only federal as well as state/provincial orchestration among governments, but also active and ongoing NGO collaboration.

Resolutions of each NEG/ECP "mini-summit" provide directives to the CC, as well as all ancillary special interest committees. Comprised of senior advisors to the governors and premiers, the CC acts as the "eyes and ears" of the 11 heads of government overseeing the work of the special committees. Working sessions of the CC are closed to the press, and each premier and governor is permitted to have only two aides

present. These sessions allow discussion of a variety of issues of topical concern, which change from year to year, and adoption of unanimous resolutions. The deliberations at the "mini-summits" are generally guided by the agenda and draft resolutions prepared in advance by the CC. Each resolution is formally introduced by a "lead" governor and a "lead" premier who work in tandem with the CC. In drafting resolutions, the latter seeks to avoid open dissent among any of the heads of government in advance of any formal session open to the public; and hence, resolutions are unanimously endorsed by all 11 chief executives. Consensus on draft resolutions in advance of the annual conference is obtained because the CC frequently resorts to the telephone, telex, three meetings per year, and if needed, early breakfast preworking sessions to revise or remove language in a proposed resolution giving rise to dissent. After a closed working session, one of the two annual conference co-chairs presents the press with a summary of deliberations. Open sessions of the governors/premiers are also generally followed by a press conference. Each special interest committee is co-chaired by at least one governor and one premier as well.<sup>2</sup>

Since the very first annual conference in 1973, the format has proven to be flexible enough to allow for a gradual building of a shared sense of common regional purposes. State and provincial political and bureaucratic elites have recognized the need for cooperation among themselves through a series of modest voluntary steps rather than premature dramatic or inflexibly binding gestures. The end result has been a highly useful and adaptable multilateral consultative mechanism to identify emergent transfrontier regional issues of mutual concern and to generate and share data relevant to the resolution of these issues. Diversity of interests, structures, political cultures, and informal practices as well as two distinctively sovereign federal governments have not proven to be insurmountable barriers. The structures now in place within and among the 11 bureaucracies do identify and deal with problems that arise. Through active central staffs on both sides of the border who prepare bulletins, newsletters, and briefing materials, annual conference decisions are constantly being monitored. Moreover, the integrity of these decisions is reasonably high.

## ORIGINS

Five factors contributed to the emergence of the NEG/ECP during the early 1970s. First, informal personal friendships and contacts among



individual New England governors and Maritime premiers opened the door to the formation of more elaborate transsovereign contacts. Second, the NEG/ECP was able to draw upon the experience, expertise, and resources of already existing flexible mechanisms of intraregional cooperation among noncentral semisovereign units of government on both sides of the frontier, such as the New England Governors' Conference and the Council of Maritime Premiers. Moreover, the NEG/ECP was fortunate enough to be able to take advantage of and build upon at least 300 years of kinship, social, and trade ties between New England and Quebec as well as Atlantic Canada.<sup>3</sup>

Fourth, the October 1973 Middle East oil crisis constituted a major shock to the energy policy environment throughout "northeastern" North America. These events reinforced awareness of complementarity between fossil fuel-short New England on the one hand and Eastern Canada with its vast potential to sell hydro-electricity to its U.S. neighbors on the other. The initial ability of New England states and Eastern Canadian provinces to cooperate with one another and devote considerable amounts of time and resources in generating and sharing information relevant to policy formation in the energy sector created the momentum for reciprocal spillover into other spheres such as the environment, economic cooperation, and even for a time confidence-builders such as small-scale agriculture and genealogy.

Fifth, neither Washington nor Ottawa had any fundamental interest in seeking to block formation of the NEG/ECP, in its inception a seemingly harmless and innocuous entity without teeth—yet another link in the seamless web of myriad relationships spanning the porous Canada-U.S. border. At the same time, such a mechanism largely focusing on information generation and exchange could usefully complement efforts of the central governments to cope with the energy crisis of the early 1970s. Since the fossil fuel-depleted New England states insisted on Quebec's membership, and since the economically underdeveloped Atlantic provinces willingly joined, Ottawa could not very readily oppose the founding of the NEG/ECP, notwithstanding the Canadian federal government's suspicions (going back to the early 1960s) with respect to many aspects of Quebec's attempts at unilateral involvement in international affairs.

The first of the annual conferences of the NEG/ECP was held in the summer of 1973 at Brudenell, Prince Edward Island (PEI). However, references to the concept of a joint meeting between New England governors and premiers of adjacent Canadian provinces begin to appear

edited in order to prepare a common briefing paper for the 11 heads of governments when they convened in August.<sup>9</sup>

The CC also attempted to ensure a proper atmosphere for informal discussions among the governors and premiers. Hence, the needs and interests of wives and children as well as recreational outlets for the delegates themselves had to be catered to. At the same time, the August 1973 affair was billed as a meeting between "Eleven Heads of State"; much attention was given to protocol, or in other words, the symbols and trappings although not necessarily the substance of sovereignty.

The U.S. State Department through the NEG/C executive director suggested small gifts symbolic of the individual state should be taken by each governor for presentation to each premier. The staffs of the New England Governors were advised as to how to properly address each premier and his spouse at least initially, although it was fully anticipated that all would use first names within a short time.

The CC scheduled one three-hour formal session per day, leaving many opportunities for informal "getting to know you" discussions. All sessions were to be unstructured; two aides per premier/governor would be present. No formal outside speakers were scheduled.<sup>10</sup>

### NICE

The real work of the NEG/ECP is accomplished by its specialized committees. The first of these ancillary special interest committees, the Northeastern International Committee on Energy (NICE), whose activities are supervised by the CC on the basis of unanimous resolutions formally adopted by the annual conferences each June, was established in 1978. Its forerunner was the Eastern Provinces/New England States Energy Advisory Council, which was created at the very first 1973 annual conference in PEI. Each jurisdiction was represented by one person in the energy policy sphere. For instance, Vermont was represented by a special energy aide to the governor; and Quebec by the director general of the energy branch of the Department of Natural Resources.<sup>11</sup> What distinguished energy from the other NEG/ECP committees formed between 1973 and 1978 to consider transportation, tourism, and economic development issues was the "permanent" status of NICE versus the "ad hoc" character of the nonenergy entities. The latter had been charged by the annual conference to discuss specific issues only.

How did NICE itself come into existence? At the 1977 NEG/ECP, a resolution was passed calling for the convening of a regional conference

on alternative energy sources. In response, NERCOM (extinct after 1981) and the Eastern Canadian Provinces sponsored a conference-workshop in Boston in April 1978 to provide a basis for further cooperation and coordination on energy activities common to both regions. The Boston Alternative Energy Conference submitted a report to the 1978 NEG/ECP, which called for the public and private sectors to address and resolve any technical, financial, legal, and institutional constraints on the immediate use of alternatives to fossil fuels; and that New England and the Eastern Canadian provinces should continue to share information and cooperate on the development of alternative energy sources.

The 1978 NEG/ECP accepted the recommendations of the Alternative Energy Conference, and urged that three alternative energy projects be established: (1) an information exchange between the two regions; (2) a competition for building designs using alternative energy concepts; and (3) a wind testing facility relevant to Northeast climatological conditions for use by both countries.

To monitor and report on these projects, NICE was established. This body was made up of 10 representatives: one per province plus five New England members drawn from a regional pool; and a support staff on both sides of the border. For example, the New England pool included an academic from the University of New Hampshire Institute of Natural and Environmental Resources as well as the New England Co-chair of NICE who was also director of the Vermont State Energy Office. New Brunswick was represented by the Eastern Canadian Co-Chairman who was also that province's energy secretariat deputy minister. The staff consisted of the NICE coordinator from NERCOM and a Canadian counterpart from the ECPS.<sup>12</sup>

The first meeting of NICE occurred in January 1979. The committee agreed that its foremost function related to the aforementioned three projects entrusted to it by the premiers/governors, for which NICE would set general policy guidelines and ensure that their implementation met the intentions of the 11 heads of government. Project teams were set up to carry out the project; design project details were placed in the hands of project teams, each made up of experts within each field. The membership of these project teams illustrates the convergence of both transsovereign (governments) and transnational (NGOs) contacts within NICE. For instance, the Wind Test Facility project team included Canadian members such as a representative of the New Brunswick Electric Power Commission (public) and one from the Nova Scotia Technical College Department of Mechanical Engineering (NGO). U.S. team members included

someone from the Vermont State Energy Office (public) and the Kaman Aerospace Corporation (NGO).<sup>13</sup>

Whereas the Eastern Canadian members of NICE were nominated in August 1978 and first convened in October, the New England side was nominated in December. Consequently, at the first NICE meeting early in 1979, the Eastern Canadian provinces provided one NICE member per province. In response, the New England states decided to balance the five Eastern Canadian representatives numerically, and to appoint five persons who represented a range of energy competencies but did not necessarily represent any specific state. A similar pattern prevailed on each project team, except that most of the New England members of the information exchange team were drawn from land-grant universities.

The large size of the project teams, the NICE recommendations to the 1979 NEG/ECP noted, made it difficult to convene meetings and focus on the detailed work to be done. They recommended restructuring at both the project team and committee levels. Moreover, each state as well as NERCOM (pre-1981) should be represented as the provinces already were, because each was requested to make a financial contribution. Such representation, it was successfully argued, ensures a NICE better prepared to consider the issues and implement projects that need state-provincial funding. Should the ECPS also become a financial backer of NICE projects, it too, like NERCOM, would be entitled to representation. Thus, each representative now speaks for and is supported by his or her state-provincial agency; and responsibility for policy level decisions in the energy sphere falls squarely on NICE.<sup>14</sup> In short, the latter presently consists of senior energy officials drawn from 11 distinctive public administrations.

According to NICE representatives, financing proved to be its most significant problem during its initial period of operation (1978-81). Provinces have more direct control over application of their funds than states do. Due to the initial (1978-81) discrepancy in state-provincial representation as well as state-provincial structural differences alluded to earlier, provinces were able to secure funds to support projects early in the new year; whereas New England states were unable to secure state funds and had to spend several months working on outside funding sources, with little success. Misunderstandings ensued, and much valuable time was wasted due to states' inability to readily identify their financial sources.

In response to this problem, NICE recommended that future projects be assigned only with the understanding that state and provincial financial

resources be committed in advance in order to implement the tasks at hand. For instance, at its March 1980 meeting, NICE aborted a joint project to record, store, and exchange information on renewable energy sources due to an insufficient number of the member states and provinces willing to commit funds. The premiers/ governors noted and ratified the NICE decision at its annual June 1980 NEG/ECP.<sup>15</sup>

Since 1978, NICE has undertaken numerous projects aimed at defining and solving energy problems of New England and Eastern Canada. NICE has generated international conferences of provinces and states, which have led to in-depth study of issues such as the search for renewable energy sources, energy trade, and security of supply as well as oil, gas, and electricity development projects in both New England and Eastern Canada.

Notwithstanding the formation of a Committee on the Environment (1984) and a Committee on Sustainable Economic Development (1988), energy policy has constituted the durable cement of mutuality of interests enabling this particular organization of semisovereign governments to persist over time. Unlike highly conflictual matters such as boundary and fishery issues, a pattern of perceived complementarity of interest prevails in the energy sphere between potential Eastern Canadian supply and New England markets as well as sources of capital investment. Such perceptions of reciprocal interests are reinforced by commonly experienced autonomous events (environmental shocks) such as sudden escalations in the world price for petroleum during fall 1973 and perhaps 1990 as well.

### TREC

This committee was created in 1983 when the NEG/ECP chose to pay special attention to furthering trade between Quebec, Atlantic Canada, and the New England States (tri-regional), and to the economic prospects of those three regions. Once again, one sees the vital importance of private initiatives, personal contacts, and informal settings in enhancing the capacity of this complex consultative multilateral mechanism to define and identify emergent issues; and to regularize meaningful exchanges of information among officials on the transborder regional fall-out of worldwide trade and investment trends. A group of academics based in the three "regions" organized a project to identify trade relations within the region. They briefed the 1980 NEG/ECP and subsequently presented findings at a 1983 seminar in Boston sponsored by the NEG/ECP. This

led the governors/premiers that very same year to establish TREC. Based upon the academics' research, a book entitled *Trade and Investment Across the Northeast Boundary: Quebec, the Atlantic Provinces and New England*<sup>16</sup> was published in 1986. Because the latter volume assumed the existence of three regions, in its wisdom the NEG/ECP decided to install three co-chairs of TREC rather than the much more common two, e.g., NICE et al.

The mandate of TREC was to draft a working plan for increased commercial and economic exchanges among the three regions. The committee has organized a number of conferences on trade prospects e.g., 1984, 1985, and 1989; a symposium on business opportunities for high technology research and development (R&D) centers in 1986; a seminar on venture capital in 1987; and a sales contact center in 1988. Even prior to approval of the 1988 Canada-U.S. Free Trade Agreement (FTA), there was approximately a doubling in interregional trade in goods from U.S. \$4 billion in 1981 to U.S. \$7.5 billion in 1987.<sup>17</sup> In this latter context, TREC intends to continue serving as a vehicle to promote economic and technological links between the three regions. This committee's membership consists of one government representative per state-provincial jurisdiction.

Taken in isolation from one another, TREC recommendations ratified as premiers/governors resolutions at annual June conferences appear to be unobtrusive and insignificant. However, taken as a whole over a number of years, to the degree that they are in fact implemented, these resolutions could constitute more than a merely meaningless "paper chase" in search of the Holy Grail of more trade and economic cooperation generally among the three regions. Of course, implementation cannot be guaranteed; Ottawa and Washington sometimes have policy agendas different from that of the NEG/ECP; and each of the jurisdictions continues to retain the right to desist from collective courses of action seen to be at variance with its own interests. For example, Resolution 13-3 (13th Annual Conference, 1985) urges TREC to evaluate current state and provincial programs in trade promotion to determine if a regional cooperative effort could be undertaken. Moreover, a High Technology Advisory Group was merged with TREC; and this one committee was to examine existing programs and discuss the possibility of cooperative efforts on such matters as training and retraining of personnel, and high technology development. Resolution 13-3 then called upon NICE to report on its findings to the subsequent 14th annual conference.<sup>18</sup>

The formation of TREC can be seen as contributing to the creation of a technological foundation for cooperating member jurisdictions that is vital in a global economic context. Governments like Quebec or Vermont want their firms, especially smaller ones, to be competitive by capturing their own share of specialized market areas. The perceived aggressiveness displayed by new competitors such as Taiwan or Brazil in areas, which until recently were exclusively controlled by developed countries such as the United States and Canada, reveals how urgent it is to increase productivity and broaden industrial bases through the ultimate in high technology. One must somehow assess expertise already available in the three regions and facilitate through transsovereign cooperation among these six states/five provinces the acquisition of worldwide recognition of that expertise. To do these things, TREC must promote encounters between NGOs involved, say in high technology activities.

Consider the April 17-18, 1986 "Symposium on Business Opportunities for Research and Development Centres in High Technology" hosted by Quebec in cooperation with TREC. In attendance were approximately 150 participants and 18 guest speakers from universities, as well as private and public R&D centers in all three regions. Two of the major themes addressed included cooperation and co-participation efforts between research centers and problems related to financing the industrial innovations of research centers.<sup>19</sup> In the eyes of TREC boosters, the cornerstone of economic development sought by all NEG/ECP members depends upon a willingness to share experiences and methods in solving problems created by expensive R&D, as well as the costly production and marketing of technological products.

It is, of course, difficult if not impossible to evaluate the consequences of such symposiums. One hopes that the opportunity for company executives and researchers to meet, exchange information and experiences, as well as plan future cooperation, will bring positive results. Certainly, anecdotal "feels great to get together with peers" comments of participants constitute one criteria for "measuring" success. Thus far, however, it has proven extremely difficult to conjure up any more objective evaluative instrument.

All TREC-sponsored events have in common the development of contacts between the three regions in a practical manner through facilitating the participation of both public and private economic decision makers. The anticipation of future benefits to each autonomous jurisdiction sustains continued cooperation. The present emphasis on

accelerating the internationalization of economic exchanges mandates sustained economic growth built on a variety of poles of development ranging from energy (such as NICE), human resources, and the industrial and commercial application of R&D. Each NEG/ECP state-province has developed specific expertise in highly specialized areas. Given a context of prohibitive start-up costs, extremely rapid evolution of knowledge, and fierce world competition, increased cooperation among these 11 distinctive political units can be successfully presented as being in their own best interest. It is easy to believe that the prosperity of "Northeastern North America" depends on its global competitiveness, which is enhanced through a sharing of expertise. This in turn will help Northeastern North America develop complementary areas of specialization that should benefit each constituent unit in the region.

The 18th NEG/ECP (1990) took place in Mystic, Connecticut, and its theme was "Trading in a Global Economy: The Challenges and Opportunities of European Trade." Several background contextual factors are worthy of brief mention here. First, New England's total trade in 1989 with Quebec (exports to and imports from) and Atlantic Canada was U.S. \$7.25 billion out of U.S. \$11.9 billion with Canada as a whole. Also in 1989, Canadian electricity exports to New England consisted of six percent (7115 GWH) of New England's total consumption; 58 percent of the 7115 Canadian GWHs came from New Brunswick Power, 32 percent from Hydro-Quebec, and five percent from Ontario Hydro.<sup>20</sup> And second, the representatives assembled at the February 1990 NEG meeting declared their intent to work together to counteract that U.S. region's slowing rate of economic growth by reshaping the New England economy.

The NEG/ECP premiers-governors at their June 1990 meeting explored with a series of distinguished guest speakers opportunities and challenges awaiting businesses and industries in the transborder region. Special attention was given to rapid developments in Western and Eastern Europe; the impact of the FTA; and consideration of a "regional trade compact" to increase commercial exchanges with Europe and Japan. Among the speakers were: the U.S. ambassador to the EEC and former U.S. ambassador to Canada, Thomas M. T. Niles; the chair of the European Parliament Delegation to the U.S. Congress, Geoff Hoon; and one U.S. and one Canadian senior corporate executive assessing the new Eastern Europe.<sup>21</sup>

Energy and trade-related issues continue to be matters of central concern to the NEG/ECP. At its 17th annual conference (1989), for



example, one resolution directed TREC "to complete the development of economic profiles of the 11 states and provinces"; and to work toward realizing investment and trade opportunities among the 11 jurisdictions. Meanwhile, TREC reported to the premiers-governors on a May 16-17, 1989 combined Trade Show and Conference, organized in a "meet the buyer" format. The trade show provided a potentially salient point of contact for companies wanting to supply to more than 40 major buyers in Eastern Canada and New England.<sup>22</sup> As for NICE, it was increasingly being reminded of "the intersection of energy and environment issues . . . the need for a closer integration of energy and environmental planning." Thus, NICE was instructed to "foster an open and constructive dialogue between energy and environment officials. . . ." <sup>23</sup>

## CONCLUSIONS

The phenomenon of regional paradiplomacy is in large measure a response to greatly increased movements of ideas, people, products, pollutants, and capital investment across international boundaries in an era of revolutionary technological breakthroughs in the spheres of communication, transportation, and information storage and dissemination. Regional paradiplomacy is also a consequence of Canadian provinces and U.S. states having evolved into elaborate "social service systems" in the 20th century far beyond what had originally been envisaged in the 18th and 19th centuries. These noncentral units of government have increasingly embraced the logic of seeking cooperative contacts with sources of cultural, political, ideological, scientific, technological, and economic power in an era of environmental degradation, cyclical economic recession, and scarcity of energy as well as capital investment. Yet, despite a plethora of policy spheres marked by conflict and competition between U.S. and Canadian jurisdictions in the same region, cooperative trends between contiguous Canadian provinces and U.S. states stemming from regional paradiplomacy are likely to persist and grow. The end result can be a more effective exercise of the "police powers" of partially sovereign noncentral governments within adjacent federations to protect the health, safety, and overall welfare of their residents.

Regional paradiplomacy between New England and "Eastern Canada" can be interpreted as nothing more than a small-scale reflection of the overall patterns of inequality between Canada and the United States in the economic, military, cultural, ideological, and technological spheres. Eastern Canadian provinces harmonize their policies, cooperate, and share

resources with neighboring U.S. states due to an ongoing pattern of continental integration. Ideological as well as cultural and economic pressures toward North American homogeneity (the FTA) induce noncentral governments within the less powerful member of the dyad (Canada *vis-à-vis* the United States) to surrender to the demands of component units of the more powerful entity (the six New England states). Thus, according to this perspective, the NEG/ECP is seen as creating and sustaining a mythology of "interdependence" between good neighbors; the reality may in fact be dependence. This illusion of equality stemming from interdependence between New England and Eastern Canada is enhanced because the neighbors who face and intermingle with one another see themselves as more symmetrical in terms of power, goals, and size than is actually the case between Canada and the United States. Because they are equal in their specific regional transborder preoccupations, the semisovereign units within the two disparate federal systems feel less unequal in capacity to influence outcomes than Canadian nationalist-minded political elites in their interactions with more powerful U.S. counterparts.

However, another contrary perspective on regional paradiplomacy asserts that pragmatism rather than inevitable hegemony of states over counterpart Canadian provinces prevails. The goal is simply to maintain an intersovereign cooperative framework. Such transborder overlaps constitute embryonic "consociations of subnations," a setting or context for accords arrived at by amicable agreement. There is no New England-Eastern Canada asymmetrical dyad faithfully replicating the power in equality context of overall Canada-U.S. relations.

The NEG/ECP is a cross-border strategic alliance of semisovereign states and provinces for limited purposes that engage in conflict containment when necessary and conflict resolution when possible within the transfrontier space consisting of New England and Eastern Canada. These flexible voluntary linkages are between equal governments spanning both sides of the Canada-U.S. border. Each comparatively large or small (Quebec or Rhode Island), relatively wealthy or poor (Connecticut or New Brunswick) member-unit retains its capacity to disengage at any time from courses of action adopted by the other components of the strategic alliance.

In tandem with the FTA, globalization has significantly influenced the formation and evolution of this hands-across-the-frontier strategic alliance for limited purposes. The great amount of time, resources, and commitment that cohabiting adjacent states and provinces must mobilize to

adequately cope with the consequences of globalization underlines the need for loose cross-border mechanisms to enable the semisovereign member governments to dialogue and cooperate with one another for limited purposes. These purposes include finding ways to produce and market goods and services more efficiently than political jurisdictions "outside" this international region, which makes and distributes similar items, and to manufacture unique products for which clients will pay a premium. At the same time, the structure and functions of the NEG/ECP, a voluntary association of semisovereign actors, permit each member at any moment to resume an adversarial competitive posture in relation to the other members of the strategic alliance. Traded products and services whose output can cross borders such as hydro-electric energy, engineering consulting, and software are essential to wealth creation in all the provinces and states considered in this chapter. Moreover, industrial restructuring is an ongoing process; and no political jurisdictions can afford to stand still by making tomorrow what it makes today. Nor can individual states and provinces risk or afford to stand alone in isolated splendor or squalor. As less developed countries among Pacific Rim states such as Thailand industrialize, they tend to erode the more developed countries' international market share of labor-intensive products. Thus, individual U.S. and Canadian states and provinces come to understand that in specific economic sectors such as trade in high technology goods, they clearly have more to gain than to lose through development of transborder policy consultative networks such as TREC.

An explanation of the role and structure of this state-provincial voluntary association of executive branch heads also involves reference to nongovernmental organizations (NGOs). These political interest groups serve as vital sources and conduits of information, providing an awareness of emergent problem areas, an assessment of data, and prognostications about the future. As parties having tangible interests in the outcomes of NEG/ECP proceedings, NGOs invest time, human and financial resources in supporting, tracking, and trying to influence the activities of NICE and TREC.

Even more than NGOs, this chapter has underlined the crucial role of the two central governments in determining whether or not the NEG/ECP really can be effective. Much of the paper output of NICE and TREC takes the form of resolutions that in part recommend specific kinds of action or inaction on the part of Ottawa and Washington. Thus, data and common policy perspectives so laboriously generated and exchanged among representatives of semisovereign provincial and state governments

that cannot negotiate and sign treaties unilaterally, could be rendered useless. The two federal governments, however, often do pay attention to NEG/ECP proceedings, provide logistical support when appropriate, and positively respond in concert to recommendations embedded in the annual NEG/ECP resolutions. The latter frequently address complex multidimensional issues where both federal as well as state and provincial governments share responsibility in overlapping spheres of jurisdiction. At the very least, Ottawa and Washington tacitly acknowledge that vital political interests of provinces and states are substantially impacted by central government initiatives or the lack of initiatives.

Neither of the two central governments has found it necessary to incur the political costs involved in preventing the emergence of this binational coordinating mechanism for selected states and provinces that is unique in North America, namely the NEG/ECP. Even Trudeau-led governments in Ottawa, which were highly nationalistic *vis-à-vis* the United States, and hostile to many of Quebec's aspirations in the sphere of international relations on grounds of "national unity," may have acquiesced because opposition by Ottawa would have incurred the wrath of the Atlantic provinces as well as Quebec. In general, attitudes ranging from benign neglect to outright endorsement have alternatively characterized official responses in Ottawa as well as Washington towards the phenomenon of regional paradiplomacy. The volume and diversity of transborder flows between the two countries as a whole continues to increase, the issues such as energy-environment trade-offs grow more complex, and the capacity of central governments to unilaterally manage these relationships shrinks.

And finally, what will be the impact of the future course of Quebec politics *vis-à-vis* the workings of the NEG/ECP? Since 1960, Quebec has served as a bellwether for other provinces in forging a significantly more decentralized foreign policymaking process in Canada than exists in the United States, not only with respect to the internationalization of provincial spheres such as education, culture, health, and social welfare under Sections 92 and 93 of the Constitution Act (1982), but also the internationalization of provincial roles in spheres of jurisdiction shared with Ottawa in such economic development areas as energy exports. If they so elect, and provinces such as Ontario and Alberta as well as Quebec have so chosen, Canadian provinces have broader opportunities to directly engage in foreign economic policy ventures than counterpart U.S. states. Moreover, provinces have additional political leverage *vis-à-*

*vis* Ottawa that states do not have *vis-à-vis* Washington by virtue of their treaty implementation powers.

At this point, one can only assume that as long as Quebec and Canada continue to grope towards some kind of concrete definition of sovereignty-association, or "renewed federalism" in the aftermath of the Meech Lake debacle, the NEG/ECP will remain in place. The Meech disaccord will have the effect of reaffirming common interests among contiguous good neighbors on both sides of the border in continuing and even strengthening already existing habits of association. With respect to Quebec, the most populous and wealthiest of the Canadian members of the NEG/ECP, both Jacques Parizeau and Robert Bourassa understand that its economic destiny is closely linked with the effective implementation of the FTA. At least until such time as Quebec attains some form of plenary political sovereignty, it is unlikely to undermine the NEG/ECP, which has served as a privileged vehicle of communication with counterpart U.S. states and also indirectly with Washington.

Perhaps ironically, Quebec's wholehearted participation in the NEG/ECP regional diplomacy is a tangible indication of "complex interdependence" at a time when a significant number of Quebec citizens favor outright independence. This may mean that continued maintenance of reasonably harmonious relationships within the NEG/ECP between Quebec and its New England neighbors will depend upon Quebec consenting to unanimous resolutions that frequently call upon both Washington and Ottawa to heed the policy recommendations of constituent subunits within their respective nations.

## NOTES

<sup>1</sup>E. M. Fanjoy, "The Conference of New England Governors and Eastern Canadian Premiers: A View from the Inside," New York State Political Science Association, Albany, New York, April 1990, 8.

<sup>2</sup>Martin Lubin, "The Conference of the New England Governors and the Eastern Canadian Premiers," Western Social Science Association, San Diego, California, April 26, 1984, 8.

<sup>3</sup>Martin Lubin, "New England, New York and Their Francophone Neighborhood," *Perforated Sovereignties and International Relations: Trans-Sovereign Contacts of Subnational Governments*, ed. I. D. Duchacek (Westport, Connecticut: Greenwood Press, 1988), 144.

<sup>4</sup>L. Duclos, "Gouvernement du Québec, Ministère des Affaires Intergouvernementales," Letter to NEGEC executive director, June 11, 1971.

<sup>5</sup>"New England Governors' Meeting," Unclassified Memorandum, From Europe/Canada to S. Governor, September 1, 1971.

<sup>6</sup>Special Assistant to U.S. Secretary of State, Letter to NEGC executive director, January 17, 1973.

<sup>7</sup>Premier Campbell (PEI) to Secretary of State for External Affairs, June 18, 1973.

<sup>8</sup>"Major Issues in Energy Development: New England and Eastern Canada," Meeting of New England Governors' and Eastern Canadian Premiers' representatives, summer meeting, Halifax, Nova Scotia, April 24, 1973.

<sup>9</sup>Principal Assistant to the Premier of Nova Scotia, letter to NEGC executive director, May 25, 1973.

<sup>10</sup>*Schedule*, First Annual NEG/ECP, Brudenell, PEI, August 1973.

<sup>11</sup>See NEGC file, 1973.

<sup>12</sup>NICE, Document: 850-12/002, 10-14.

<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

<sup>15</sup>Eighth NEG/ECP, Energy Information Exchange. Record of Discussion 8-11, Basin Harbor, Vermont, June 25-27, 1980.

<sup>16</sup>William D. Shipman, ed., *Trade and Investment Across the Northeast Boundary: Quebec, the Atlantic Provinces and New England* (Montreal: Institute for Research on Public Policy, 1986).

<sup>17</sup>Martin Lubin, "The Permeability of Intersovereign National Boundaries: An Update on Transborder Regional Paradiplomacy between Non-Central Governments of Eastern Canada and New England," Association for Canadian Studies in the United States, unpublished paper, San Francisco, California, November 21, 1989, 12.

<sup>18</sup>Martin Lubin, "The 1985 Annual Conference of New England Governors and Eastern Canadian Premiers: A Report," Western Social Science Association, unpublished paper, Reno, Nevada, April 26, 1986, 11. See also NEG/ECP 1985, TREC Report; and unofficial verbatim transcript.

<sup>19</sup>R. Bourassa, "The Activities of TREC and the Potential Furthering of Economic Relations between New England, the Atlantic Provinces, and Quebec," *Notes for a Speech by Premier of Quebec*, Lowell, Massachusetts, June 11, 1986, 3.

<sup>20</sup>*NEGC Update*, vol. 3, no. 6, Boston, Massachusetts, Spring 1990, 4, 7.

<sup>21</sup>*Ibid.*, 3.

<sup>22</sup>Seventeenth NEG/ECP, *TREC Report*, Montebello, Quebec, June 7-9, 1989, 2.

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# *Canadian Provincial Trade Offices in the United States*

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## INTRODUCTION

The aim of this chapter is to provide some information on, and perceptions of, trade offices in the United States that are maintained by Canadian provincial governments. In the summer of 1990, there were 23 such offices, maintained by seven provincial governments. A survey was done of these 23 offices and then of headquarters units in Canada that incorporated telephone, written, and some personal contact.

Very little has been written about such offices. There are many of them, supported by states and provinces and municipalities in a variety of countries. Peter Eisenger, writing about U.S. state economic development efforts, sums up the reasons:

The advent of the entrepreneurial state has curiously gone almost unnoticed by the public. But this is perhaps not surprising: the initiatives that define this new intervention are small, technically complex and difficult to evaluate. In addition, the policy domain is inhabited by subnational actors, generally less visible to the public eye than those in Washington.<sup>1</sup>

Earl Fry notes the same lack of visibility:

In marked contrast to the commotion caused by FDI (foreign direct investment) at the national level in both Washington, D.C.,

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This study is an outgrowth of considerable earlier research into U.S. state economic development policies. The Centre for International Business Studies of the School of Business Administration and the U.S. Policy Studies Group, Faculty of Management at Dalhousie University provided assistance for this project.

and Ottawa, state, provincial and local governments are quietly spending hundreds of millions of dollars each year in an effort to attract this investment from abroad. More than two-thirds of the American states have opened almost ninety offices abroad. . . . In Canada, seven [eight in 1990] of the ten provinces have opened more than forty offices abroad.<sup>2</sup>

As a result of surveys done by the National Association of State Development Agencies (NASDA) since 1984, more information is becoming available about U.S. state offices.<sup>3</sup>

## PROVINCIAL INTERNATIONAL ECONOMIC ACTIVITY

By far, the most important Canadian provincial international concern relates to economic development. National and subnational units in all countries realize that their well-being depends for the most part on the global competitiveness of their business sectors. It is a truism that if a company does not export successfully, even a minuscule portion of its products, it can expect fierce competition in its home market from exporters. Similarly, if the returns to capital in one jurisdiction are significantly deficient relative to others, then new investment will flow elsewhere and eventually living standards will fall. The factors that promote or inhibit trade and investment are greatly influenced by public policy decisions.

In this context of global competition, it is impossible to discuss a political unit without recognizing that it has some kind of an industrial policy.<sup>4</sup> The policy may be active or passive, and it may include or omit any number of programs, incentives, or disincentives, but, like gender in describing human beings, every political unit has some kind of industrial policy. International economic activity fits into these policies in different ways, reflecting how actively the nation, state, or province feels it has to involve itself in global economic competition.

In general terms, provincial industrial policy focuses on three aspects of international business. First, it is concerned with increasing exports to foreign markets. Second, it is concerned with increasing tourism by foreigners. Third, it is concerned with gaining new investment from abroad. Generally, preferred investment is that which directly results in new productive facilities, as opposed to the purchase of financial instruments. Capital movements in themselves are not as important or desirable as capital that comes with corporate or entrepreneurial expertise, marketing connections, and technology.



The pursuit of increased trade, tourism, and investment is accomplished through making foreigners aware of the advantages of the province's products or investment climate and by reducing foreign ignorance about its exports, tourist delights, or investment possibilities. Awareness is increased through promotions, including advertising, and through personal contacts. Reducing barriers or inhibitions can be accomplished through province-to-state meetings, memoranda of understanding, and joint undertakings.

There are two philosophies that influence the choice among the wide variety of devices that can be used to increase trade, tourism, and investment. The first is the conviction that targeted activities undertaken from the province itself are likely to be the most cost-effective. Trade missions led by premiers and ministers, the purchase of advertising in foreign media, prominent attendance at trade shows, and the use of local business people as "ambassadors" when they travel abroad are some of the activities that demonstrate this approach.

The alternative is not so much an alternative as an addition. Provinces may see their promotional activities being more effective if there is a permanent provincial presence in their major foreign markets. A local office, it is felt, will ensure more effective local contacts, better business intelligence, better representation at trade fairs, and a better understanding of foreign government policy. Staffing a provincial office entails considerable fixed expenses but may significantly improve the pay-off of other efforts.

## **PROVINCIAL OFFICES IN THE UNITED STATES**

At the beginning of 1991, there were 23 provincial offices in the United States. Seven provinces had at least one office, while Manitoba, Prince Edward Island, and Newfoundland, and Labrador had none. While the first office was opened by Quebec in 1940, two of the provinces, Saskatchewan and New Brunswick, are latecomers, establishing offices only since 1986. See Table 6.1.

Ontario not only has the most offices in the United States, but it has also had a record of instability in maintaining offices over the years. Five of its offices were closed at one time or another, and two of these were subsequently reopened. Nova Scotia, which had a temporary tourism office in Wisconsin in the 1970s, and Alberta, which had an office in Houston, also closed offices. Table 6.2 shows the opening and closing years of provincial offices.

**Table 6.1. Provincial Offices in 1991**

Sponsor		Location	
Ontario	7	Los Angeles	4
Quebec	6	Boston	4
British Columbia	3	New York City	4
Saskatchewan	2	Chicago	2
Nova Scotia	2	Atlanta	2
Alberta	2	Minneapolis	2
New Brunswick	1	San Francisco	1
		Seattle	1
		Dallas	1
		Louisiana	1
		Maine	1
Total	23		23

**Table 6.2. Opening and Closing Dates of Offices**

1940	Quebec
1956	Ontario
1960	Ontario
1964	Alberta
1968	Ontario (3)
1969	Quebec (2), Ontario
1970	Quebec (2)
1971	Ontario
1974-5	Ontario (-3), Nova Scotia (2)
1977	Quebec, Nova Scotia (-1)
1980	Ontario (2)
1981	British Columbia (3)
1982	Ontario (2), Alberta (2)
1985	Ontario (1, -2)
1986	Saskatchewan
1989	New Brunswick, Alberta (-1)
1990	Saskatchewan, Nova Scotia

*Note:* Negative numbers = office closings, positive numbers = office openings.

Table 6.2 suggests the existence of a number of periods in provincial activity relative to the opening and closing of offices. The period 1967-71 had considerable positive activity relative to offices. The 1970s could be best characterized as volatile, with both openings and closings. The early 1980s saw a period of positive activity, while the second half of the decade was more mixed, with Alberta and Ontario (once again) closing offices and smaller provinces exhibiting more activity.

It is difficult to establish a broad rationale for the opening and closing dates of offices. The two most obvious would be economic cycles and political cycles. Neither of these is consistent. For instance, the flurry of openings in 1968-71 corresponds to the end of a long period of prosperity and growth in Canada, as does the period 1986-90, but the other period when many offices were opened, 1980-82, corresponds to a recessionary period. Does one expand trade functions in the middle of a recession or when it looks like prosperity might go on and on?

A similar problem exists when political cycles are matched with these dates. Except for the volatility in 1985, Ontario's experiments with U.S. offices all come under a succession of Conservative governments. The election of the PQ government in Quebec did not lead to a more expanded provincial presence in the U.S.: only an office in Atlanta was added to the existing locations. Most of Quebec's activity came under the Liberals in Bourassa's first term as premier.

There also does not seem to be any discernable pattern of "follow the leader" in terms of office openings and closings. Of the 15 sites tried for office locations noted in Table 6.3, Ontario has tried 10 and abandoned, at one time or another, five. Two of these were subsequently reopened. The rest of the provinces have followed their own strategies at their own times.

What does emerge is an expected geographic approach on the part of each of the provinces. British Columbia, for instance, has concentrated on the U.S. West Coast, while Nova Scotia and New Brunswick have opened offices on the East Coast. As one would expect, Alberta has an office on the West Coast while Saskatchewan is represented in Minneapolis, in the upper Midwest. Their New York offices have a lot to do with their financial and investment concerns.

Quebec has concentrated on the East Coast as well, with the exception of the manufacturing centres of Chicago and Los Angeles. Its office in Louisiana is tied to the Cajun culture. The office in Atlanta, like that of Ontario and the federal government, is an anomaly. The major commercial and financial centre of the Southeast, and of Latin

Table 6.3. *Locations, Opening and Closing Dates, and Sponsors of Provincial Offices*

DATE	LA	BOS	NYC	CHI	ATL	MPLS	SF	STL	DAL	LA	ME	CL <sup>a</sup>	PHI <sup>a</sup>	HOU <sup>a</sup>	WIS <sup>b</sup>
1940			Q												
1956			O												
1960				O											
1964	A														
1968		O			O							O			
1969	O			Q						Q					
1970	Q	Q													
1071						O									
1974-75		Θ			Θ						NS	Θ			NS
1977					Q										NS
1980					O				O						
1981	BC <sup>c</sup>						BC	BC							
1982			A				O						O	A	
1985		O					Θ						Θ		
1986			S												
1989		NB												A	
1990		NS				S									
1990 Totals	4	4	4	2	2	2	1	1	1	1	1	0	0	0	0

<sup>a</sup>Cleveland, Philadelphia, and Houston<sup>b</sup>Wisconsin<sup>c</sup>Later moved to Irvine, in Orange County.

Note: Letters represent provincial names and office openings (e.g., O = Ontario, BC = British Columbia). Slashes represent closing of offices.

America as well, is Miami, but the political sensitivity of having to defend a Florida office at home has inhibited all Canadian jurisdictions from locating there. Atlanta is everybody's second choice.

Only Ontario has made a serious effort to cover the major regions of the United States (except for the Northwest). Even its diverse economic and other interests have not allowed it to support a wide variety of offices. A West Coast office in San Francisco lasted three years, as did one in Philadelphia, while that in Cleveland lasted six years. Offices in Boston and Atlanta opened, closed, and reopened.

With the exceptions of the B.C. tourism office in San Francisco, the Nova Scotia tourism office in Portland, Maine, and the Quebec cultural office in Lafayette, Louisiana, all of the existing offices began with a concentration on trade promotion. Table 6.4 illustrates the reasons given in the survey for opening offices in particular locations.

Finally, location is constrained in one geographic area, that of Washington, D.C., where the Canadian federal government has quietly (and unofficially) made it clear that it would consider provincial offices as provocative. Most provinces use legal and lobby firms in Washington as their representatives in any case.

## OFFICE ADMINISTRATION

Staffing for the offices varies, Quebec's office in New York being the largest with 38. Ontario's office in New York has 22 staff, while Quebec's office in Boston employs 19. Both Ontario's and Quebec's offices in Los Angeles and Chicago have 12-14 staff. At the other end of the spectrum, New Brunswick's office in Boston and the B.C. tourism office in San Francisco have one person, Nova Scotia's Boston office has two, as does Saskatchewan's in Minneapolis. All others have five-to-nine staff. The total complement as of mid-1990 was 194.5 person years, of which 103 are professional positions. Sixty-four staff are U.S. locals.

One Ontario trade office noted that it is not effective to try to run an office with just one Canadian staff person. An American officer is needed for assistance in contacting the local business community and in understanding the area's social background.

Most national governments have established policies for the rotation of their nationals into and out of foreign postings in order to retain a strong orientation toward the policies of the home country. Rotation policies for provincial offices in the United States are similar. Ontario and Quebec have set policies at three to four years; Alberta has a four-

**Table 6.4. *Reasons for Office Location***


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B.C./Seattle	Good location for first-time B.C. exporters to launch themselves into the U.S. market
B.C./Irvine	Optimum location to link with industry sectors targeted by the B.C. government
Ont./Atlanta	Main economic centre for the U.S. southeast
Ont./Chicago	Area is the largest source of the U.S. investment in Ontario and largest market for Ontario exports
Sask./Mpls.	Area is involved in 50 percent of Saskatchewan's imports and exports
N.S./Boston	Historically critical trade area for N.S. exports
Que./All offices except Louisiana	Strategic importance as regional economic centres

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year term, and Saskatchewan has a five-year term for its Minneapolis office. The Saskatchewan office in New York is entirely staffed by U.S. locals on three-year contracts, and the provinces of B.C., New Brunswick, and Nova Scotia have no rotation policies in place, the last two because the offices are so new.

Most of the offices were established to assist in trade promotion. Gradually, they have become more involved in investment promotion and, to a lesser extent, in tourism. Not surprisingly, Quebec's offices have been given expanded mandates, including intergovernmental affairs, communications, immigration, and public relations. Others have seen their mandates change over time. B.C. moved its Los Angeles office to Irvine and refocused its activities from tourism to investment in 1989. A similar evolution took place within B.C.'s Seattle office.

Some offices have particular strategic mandates. Both Ontario's and Quebec's Boston offices were opened with specific high technology mandates, as was Ontario's office in Dallas. The Ontario office in Chicago was opened to attract manufacturing investment, Chicago being the largest manufacturing area in the U.S. until recently. Quebec's

interest in the Los Angeles area began with a high-technology focus. There appears to be a new emphasis on promoting tradeable services (engineering, consulting, finance) in Ontario's offices in New York and Los Angeles.

Communications between the offices and other provincial departments vary from place to place. Quebec is the most centralized where, by law, all dealings between the offices and the Quebec government and others must go through the Ministry of International Affairs. Yet, even in this case, direct corporation/office relationships are encouraged. Since New Brunswick's office is solely concerned with attracting investment, its relationship is simply to the Department of Commerce and Technology. In other cases, the offices are seen as serving the wide spectrum of government needs, and they communicate directly with whatever departments are concerned with a project.

Reporting to headquarters is generally done either monthly or quarterly. B.C. also has a yearly meeting with the managers of the offices, while Quebec has an annual office evaluation process. As in many other facets of office administration, processes are more formal and sophisticated where there are more offices to administer and where the program has been in existence longest.

A number of approaches have been devised to measure the activities of the offices. This is complicated in the trade area by the nature of the sales process. A company may identify potential buyers in an area and use the provincial office for introductions. On the other hand, a company may look to the office for assistance in identifying buyers as well. Sales may come as a direct result of the activity of the office or may come much later, if at all. The same results measurement difficulties can arise as a result of office/company collaboration at trade fairs.

Reporting on investment attraction is equally complex. A common investment decision may involve a local U.S. office, the home provincial department, Investment Canada, a Canadian bank, and a number of municipal economic development authorities, as well as a professional industrial location consulting firm. Who, in the end, should be credited with the new investment? The answer is unknowable, and this inability to separate the respective value of the team members can leave the office open to critics it cannot credibly answer.

In the end, results are measured as activities. Reports generally take the form of the number of companies assisted, packages of materials distributed, and contacts made. Some offices measure these on a short-term basis, while others try to do follow-ups for as long as two years.

These long-term measurements can lead to reports that credit the offices that use them with trade sales and investment successes. Trade measurements can also be made on intermediary activities rather than outright sales. Intermediary activities may be the number of companies who find U.S. distribution agents for their products, for instance. Other offices will report results not in terms of sales or investment dollars, but will translate these into jobs created in Canada.

## OFFICE CLIENTELE

By and large, the companies served by the provincial offices are fairly small. This holds true even in tourism, where the offices are engaged in promoting specialty resorts, ranches, and fishing camps. This is not to say that their doors are closed to large companies. Instead, the larger corporations can afford their own trade and investment people and make proportionately less use of the offices. The offices are also used by large and small companies alike if they are first-time exporters.

Traditionally, the more established offices began by assisting small manufacturing companies. As the economies on both sides of the border have become more diverse, more service firms, including computer software and support companies, have begun to take advantage of these offices. The Ontario office in Dallas, for instance, estimates that 70 percent of its Ontario contacts are with small and medium-sized businesses and 30 percent are with larger companies. The office also notes increasing interest in the Dallas market by medical supply and transportation companies as well as the more usual manufacturers.

## FEDERAL-PROVINCIAL RELATIONSHIPS

In general, the provincial offices tend to work with federal officials and programs. They also tend to work with each other on joint promotions. The responses from each provincial office in the Los Angeles area exemplify this cooperative atmosphere:

- Alberta: Works with federal government. Must sell Canada first in this highly competitive market.
- B.C.: Works with Canadian Consulate and offices of Alberta, Quebec, and Ontario, especially on trade shows. Gets B.C. companies to participate in federally sponsored missions to L.A.



Ontario: Ten to 15 joint efforts, missions, seminars, shows per year with federal government and other provinces.

Quebec: Open, cooperative relationship with federal officials and other provincial offices.

There was some questioning of the nature of interprovincial cooperation by a representative of one office elsewhere. His concern centred on a tangible sharing of costs and benefits, since his office was alone in his area. In others, interprovincial cooperation was mandated as part of the office activities. Finally, the existence of the New England Governors/Eastern Canadian Premiers organization means that the offices of Quebec, New Brunswick, and Nova Scotia in Boston must cooperate in order to be congruent with this broader cooperative endeavour.

### LOCAL NETWORKING

Establishing relationships in the local and regional communities is an integral part of the operations of provincial offices. Some respondents have said that this is their major activity. Where trade, tourism, and investment promotion are involved, an extensive network of contacts is the lifeblood of these offices. No less important is the process of developing relationships for the lone cultural office maintained by Quebec in Louisiana.

All the offices are involved in organizing government visits and missions to their geographic areas. Quebec is the most formal in this area with contact through the provincial office required of Quebec government officials.

The size of the American regional economies requires that these offices target and formalize much of their networking. It is simply impossible to maintain contacts on a wide range of topics without a large staff of specialists. In spite of the above, many respondents underlined the importance of informal contacts with local "key" people.

Formal networking is undertaken with chambers of commerce and local economic development groups. Receptions, trade shows, and business luncheons are of great importance in developing contacts. Many respondents noted that the U.S. regional business communities are tightly socially integrated and that much business is done through social contacts. As one Ontario office respondent put it, "Social contacts are key to the success of this office."

Others note that informal contacts are most useful for specific projects. This comment was especially put forth by Quebec respondents,

though it was apparent through other responses that many of the offices relied more heavily on this form of contact for a wider range of pay-offs than just "specific projects." In some ways, all activity could be defined as a series of discrete projects. Many other respondents noted that informal contacts were important for trade leads but not for specific export sales. In a way, this contradicts the Quebec response.

## THE PARADIPLOMATIC ACTIVITIES IN PROVINCIAL OFFICES

Paradiplomacy is a term that refers to international activities that take place alongside (hence the use of the Greek prefix "para") traditional diplomatic activity.<sup>5</sup> Traditional diplomacy, in turn, consists of those activities conducted between and by sovereign states. Paradiplomacy is conducted by subnational units, such as provinces and cities.

As one would expect of a system where there are over 500 possible international/subnational relationships, the variety of paradiplomatic activities is very broad. The situation is complicated by what appears to be a great lack of knowledge about the mechanics of the province-state relationships that do exist. There is no real standardization of activities, such as that subsumed under terms like "treaty" or "trade quota." Our survey identified a large number of paradiplomatic activities that we subsequently reduced to 12. The number could possibly be reduced further, but this would render their descriptions more abstract and much of the behavioral variety would be lost.<sup>6</sup>

Probably the vast majority of activity in the provincial offices is devoted to the needs of exporters and manufacturing companies "back home." The paradiplomatic activities described below do *not* include what might therefore be defined as the normal promotional activities of offices designed to improve trade, tourism, and investment. The list below is restricted to government-to-government activities, or at least ones that include such "public" bodies as chambers of commerce. However, even at this official level of activity, the goals of trade, tourism, and investment growth are still paramount.

### 1. Facilitate Official Meetings

One of the more consistent activities is to arrange or assist for the provincial and state government leaders to meet. In New York, for instance, a Quebec-New York accord provides for an annual meeting

between the governor and the premier. Similar meetings may be held in other venues on a more occasional basis.

## **2. Monitor Legislation**

State legislation and regulatory activity can have an important bearing on trade. Alberta's exports of natural gas to California constitute one example. Close monitoring of agencies and legislatures is needed. Further, American state legislative activity is nowhere as transparent as that in Canadian provinces. Records of debates in committees are often not kept. Such informality means that a closer watch must be kept on U.S. activities than Canadians would normally expect.

## **3. Network with Consulates of Third Countries**

Provincial trade officers can sometimes find themselves included in wider diplomatic circles. This allows them some access to information about American activity and attitudes that might not be otherwise apparent.

## **4. Assist with Meetings Related to Formal Structures**

There are at least four formal structures that involve Canadian provinces and American states. These are the New England Governors/Eastern Canadian Premiers organization, the Pacific Northwest Legislative Forum, the Great Lakes Commission (with Canadian observers), and the meetings of the Western Governors Association and the Western Canadian Premiers. The first has had a formal existence for nearly two decades. The rest involve people from both countries on a more occasional basis. In all of these, however, office personnel are called upon for logistical help, attendance, and information.

## **5. Assist with Agreements**

There are numerous formal accords, memoranda of understanding, and specific project agreements that have been negotiated interregionally or bilaterally. Office personnel may be involved in the negotiations, or in the case of longstanding agreements, may have the responsibility for on-the-spot management of them. One example of such an agreement is an Ontario-Illinois MOU on trade and technology research.

## **6. Direct Relations with State Government Staff**

Most offices have a regional mandate, and the office personnel are expected to have working relationships with government personnel in a number of states. While there is a tendency to be closest to state staff in the immediate area of the office, there is often a need to work with those at a distance. Quebec's attempts to sell hydro power to Vermont and Maine is a case in point. Ontario's trade with the middle Atlantic states requires its New York office to be in constant touch with officials in six states.

## **7. Joint Promotions**

On occasion, Canadian provinces and American states have engaged in joint promotional activities. These have been undertaken, for instance, on each coast. The New England Governors/Eastern Canadian Premiers (NEG/ECP) undertook to promote tourism to the whole area in Europe in the early 1980s. A variation on this promotional theme is that of joint lobbying. Again, the NEG/ECP resolved to push their respective federal governments on the acid rain problem many times in the mid-1980s. These joint promotions require the active participation of the regional offices, both to ensure coordination of the efforts and, in the case of federal lobbying, to demonstrate tangible "international" support at meetings and speeches.

## **8. Assist with Incoming Trade Missions**

Working with staff in the various states is often a reciprocal relationship. If a trade officer expects a state government to be receptive to a trade mission from his or her own province, then the favour must be reciprocated. Often, this means providing information and advice to state officials planning a trade mission to Canada. The trade office may be requested to arrange a meeting with the premier or minister for the incoming mission. Since trade has to be a two-way flow, such reciprocal assistance only makes good sense.

## **9. Help Develop State-Provincial Roundtables**

Some provincial offices have been instrumental in bringing state and provincial people together to discuss issues of mutual importance. As

well, the NEG/ECP structure has included many roundtables, seminars, and reverse trade fairs over the years. Seminars and roundtables have dealt with items such as technological cooperation, small-scale agricultural techniques, and measures to counter forest insect infestations.

#### **10. Assist with Educational and Cultural Exchanges**

One office, that of Quebec in Louisiana, has this virtually as its sole *raison d'être*. Other provinces, notably Saskatchewan, appear to place a priority on such exchanges. The provincial offices work to implement agreements calling for such exchanges by arranging logistical details and making sure that officials in the home province are briefed on the exchange personnel.

#### **11. Assist with Unofficial Meetings**

The New Brunswick office in Boston helped to arrange a joint meeting of the Maine and New Brunswick Chambers of Commerce. The operations of the New England/Canada Business Council have been supported by both the federal consulate in Boston and the provincial offices there. Offices elsewhere have encouraged trade seminars and provided speakers to American conferences and meetings.

#### **12. Assist "Sister-City" Relationships**

The notion of twinning cities or developing sister-city arrangements was quite popular in the 1950s. It tended to die down later until it was revived by East Asian governments eager to develop trade ties and exchange ideas on urban growth patterns. It has subsequently grown popular again all over the world. Our respondents noted particularly the developing sister-city relationship between Los Angeles and Vancouver and between the suburbs of Toronto and those of Dallas.

### **CONCLUSION**

Provincial offices have existed in the United States since 1940, with the greatest growth in numbers coming after 1967. There are now 23 such offices, concentrating on trade, tourism, and investment promotion.

These offices also play a wider function than simply to assist in provincial industrial policy. They also are involved in a variety of

paradiplomatic activities that parallel federal actions, are harmonious with them while being largely autonomous. A few provincial offices are even "co-located" inside the facilities of Canadian consulates. Twelve types of activities were identified that involve diplomatic functions, that is, activities that go beyond assisting businesses and provincial and municipal government agencies to make relevant commercial contacts in the United States.

Evaluation of the worth of these activities is a difficult subject.<sup>7</sup> This chapter has touched on the offices' functions, relationships, activities, and involvement in policy without going too far into analyzing these facets. All that can be said is that it constitutes a first step. Even the operations and roles of national embassies and consulates seem to be neglected areas of research. Except for some speculation about the changing roles of such offices in an age of telecommunications or some fictional speculation on embassies in pre-Christian times (see Gore Vidal's *Creation*), the literature seems quite silent on the subject.

The provincial offices in the U.S. surveyed in this paper are a subset, though a large one, of Canadian provincial offices abroad. Provincial offices overseas date back to the mid-18th century, when Nova Scotia sent a representative to London to press its interests, especially economic ones, with the Colonial Office. Many states and municipalities in other countries also have foreign offices. It is likely that the various activities documented in this chapter are replicated in such offices all over the world.<sup>8</sup>

Finally, the researcher and the author would like to express their appreciation for the almost total cooperation and candour of those who manage the offices in the field and those in the relevant provincial departments.

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<sup>2</sup>Earl H. Fry, "The New International Cities Era: The Global Linkages of North American Cities with an Emphasis on Los Angeles and San Francisco" in Earl H. Fry, Lee H. Radebaugh, and Panayotis Soldatos, eds., *The New International Cities Era: The Global Activities of North American Municipal Governments* (Provo, Utah: Brigham Young University, 1989), 7.

<sup>3</sup>National Association of State Development Agencies (NASDA), *State Export Program Database* (Washington, D.C.: NASDA, 1984 and 1988).

<sup>4</sup>J. D. McNiven, "Subsidies and Industrial Policy in the United States: The Case of Technology Development" (Halifax: Centre for International Business Studies, Dalhousie University, 1989) Discussion Paper #82, 9-14.

<sup>5</sup>P. Soldatos claims to have introduced this term as a substitute for more complex phrases describing foreign relations activities by subnational units. See his "Cascading Subnational Paradiplomacy in an Interdependent and Transnationalized World: Canadian Provinces and U.S. States Paradiplomacy Revisited," presented at States and Provinces in the International Economy Symposium, Berkeley, California, November 1990, 5; see Ch. 2, this volume, 45-64.

<sup>6</sup>These offices' paradiplomatic activities fit within Soldatos' framework as "parallel action, in harmony, without a federal monitoring role." See *ibid.*, 17-18.

<sup>7</sup>Eisenger, *op. cit.*, 336-39.

<sup>8</sup>See, for instance, John Kincaid, "State Offices in Europe," *Comparative State Politics Newsletter* 6(4) (August 1985): 22-28.

# *State Export Promotion Policies*

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## INTRODUCTION

Since the late 1970s, the U.S. states have assumed a greater role in fostering the internationalized competitiveness of their industries. The consequences of increased state activism may best be seen in the context of two sets of developments: (1) the trend, which began in the late 1970s, of Washington pushing more of the burden for financing discretionary activities onto state and local governments, and (2) advances in electronics and new materials, the development of new products and industries, and energy conservation combined to accelerate structural change within manufacturing throughout all the advanced industrialized economies. By themselves, these trends would have heightened the competition for new plants and jobs among the states. Adjustments were exacerbated by the internationalization of the U.S. economy and the decline of American technological dominance. Competition among the states for plants and jobs was extended beyond offering favorable environments to no longer dominant U.S. multinational corporations to promoting exports among smaller, more innovative American firms and attracting foreign investors with access to state-of-the-art methods. This chapter reviews the development of export promotion programs.<sup>1</sup>

## THE ENVIRONMENT FOR STATE ACTIVISM

During the Carter administration, the combined effects of legislated commitments to entitlement programs and a desire to hold the line on taxes limited federal appropriations for discretionary expenditures includ-



ing grants-in-aid to state and local governments. Under President Reagan, these pressures grew as the defense buildup and tax cuts further preempted federal resources. Consequently, federal grants-in-aid dropped from 16.5 percent of federal outlays in 1977 to 10.4 percent in 1990. Federal aid as a proportion of total state and local spending dropped from 25 percent in 1977 to 17 percent in 1990.<sup>2</sup>

Among federal nondefense activities, core federal activities (for example, the activities of the Departments of State, Transportation, etc.) were hard hit but they received priority over less essential activities, such as economic development and export promotion, that were clearly inconsistent with President Reagan's conservative governing philosophy.

Concurrently, state governments perceived a need to ensure adequate resources to attract and develop industry. Hence the states took steps to compensate, even if partially, for cutbacks in federal spending by the Economic Development Administration, the Farmers Home Administration, and the Export-Import Bank. Average outlays for economic development purposes jumped from U.S. \$5.1 million in 1982 to U.S. \$19.8 million in 1988 (see Table 7.1). Budgets for attracting foreign investment and promoting exports increased from U.S. \$.5 million to U.S. \$1.0 million.

Such increases in activity, while large in percentage terms, would hardly be expected to break state budgets. However, when seen in the context of the cutbacks in federal aid and rising state and local taxes, these increases are substantial and indicate some sense of urgency among the states.

## STATES IN THE INTERNATIONAL ECONOMIC ARENA

The importance of exports to the states can best be appreciated with regard to the contribution of exports to national economic growth in the late 1980s. After 1985, the exchange rate for the dollar fell, and exports replaced domestic consumption as the primary source of economic growth. Whereas exports accounted for only eight percent of U.S. GNP growth between 1983 and 1986, their contribution jumped to about 50 percent for the balance of the decade.<sup>3</sup> Nearly 80 percent of new manufacturing jobs in the United States are now related in some way to exports, and up to 70 percent of U.S. companies are affected directly by trends in international trade.<sup>4</sup> Already in 1986, a full 21.4 percent of the total manufacturing jobs in Washington state were related directly to

**Table 7.1. State Budgeting for Economic Development, 1982-1988 (U.S. \$)**

	1982 Average	1984 Average	1986 Average	1988 Average
State Appropriation	5,101,000	7,805,000	17,480,000	19,767,578
of which:				
Manpower Training	1,970,000	3,487,000	1,912,000	6,398,500
Local Development	1,110,000	1,919,000	3,243,000	3,713,211
Industrial Development	1,249,000	2,112,000	4,218,000	5,016,569
International	522,000	554,000	874,000	960,409

*Source:* National Association of State Development Agencies (NASDA), *State Economic Development Expenditure Survey* (Washington, D.C.: NASDA, 1988).

exports as well as 40 percent of such jobs in Alaska, 19.5 percent in Vermont, 15.6 percent in Massachusetts, and about 13 percent in New York.<sup>5</sup> Between 1977 and 1986, for example, the average growth in manufacturing export shipments of the 48 contiguous states was 60 percent, significantly greater than the 25 percent for all shipments; this translates into a rise in total export employment of 34.8 percent.<sup>6</sup>

For the states, export competitiveness became essential for participating in the recovery of the U.S. economy. Individual states recognized this international exposure and took steps to assist the entry of many small and medium-sized firms into the international marketplace. As indicated in Table 7.2, the international program of states such as Florida, New Jersey, and Oregon accounts for over 20 percent of the total state appropriations for development. This compares with an expenditure of over 15 percent of total outlays in Tennessee and Washington, 1.6 percent in New Mexico, 0.2 percent in New Hampshire, and 0.1 percent in Hawaii.

Of particular note regarding the rise in state spending is a discernable shift away from merely attempting to attract foreign investment to promoting exports. This resulted, in part, from some awareness by policymakers of the disadvantages of trying to outbid neighboring states in terms of locational subsidies and tax advantages.<sup>7</sup> Also, prior to the 1980s, export promotion was primarily a federal responsibility, and Washington, through the Export-Import Bank, funneled most of its aid to

**Table 7.2. International Programs as a Proportion of Total State Appropriations for Economic Development, 1988**

	% International Program	Total State Appropriations (U.S. \$)
Florida	25.5	7,782,134
New Jersey	22.5	20,965,000
Oregon	21.2	6,671,053
Tennessee	16.5	15,185,740
Washington	15.1	12,864,403
Idaho	10.9	2,057,800
Alaska	10.7	14,068,800
Wisconsin	10.0	16,772,100
Missouri	7.6	14,515,079
Virginia	7.4	18,670,750

*Source:* Calculated from data found in National Association of State Development Agencies (NASDA), *State Economic Development Expenditure Survey*, 1988; National Association of State Development Agencies (NASDA) *State Export Program Database* (Washington, D.C.: NASDA) 1988; Morrison, 1990.

the 100 largest corporations accounting for more than 90 percent of U.S. exports. In contrast, state efforts placed more emphasis on small and medium-sized firms, which traditionally had more localized market horizons. This movement reflected a recognition by policymakers of the need to mobilize the dynamism of America's entrepreneurs and small enterprises if the U.S. economy were to achieve the level of exports necessary to pay for growing American appetites for imported consumer goods and high-priced oil.

### THE EVOLUTION OF STATE INTERNATIONAL PROGRAMS

Table 7.3 shows international appropriations for 33 states from data provided by the National Association of State Development Agencies (NASDA). For these states, appropriations increased from U.S. \$21 million in 1984 to U.S. \$55 million in 1988—260 percent. Among the major players that have increased their commitments are California, New

**Table 7.3. Selected State International Trade Budgets\***  
**FY84, FY86, FY88 (U.S. \$000)**

State	FY84	FY86	FY88
Alabama	600.0	600.0	850.0
Arizona	200.0	477.9	425.0
Arkansas	400.0	500.0	800.0
California	460.0	5,700.0	10,450.0
Colorado	150.0	220.0	700.0
Connecticut	350.0	625.0	900.0
Florida	725.0	1,586.7	1,987.0
Georgia	904.5	1,296.2	1,894.0
Hawaii	200.0	225.0	286.0
Idaho	35.0	25.0	225.0
Illinois	2,500.0	2,632.0	2,900.0
Indiana	560.0	675.8	1,750.0
Iowa	369.8	500.0	1,493.0
Kansas	82.0	132.0	500.0
Louisiana	300.0	300.0	471.0
Maryland	300.0	1,400.0	1,900.0
Massachusetts	100.0	437.5	500.0
Michigan	1,480.6	1,966.6	2,500.0
Mississippi	525.0	400.0	500.0
Missouri	580.0	900.0	1,100.0
Montana	68.0	86.0	600.0
New Jersey	635.0	1,600.0	4,721.0
New York	2,500.0	3,040.0	3,500.0
North Carolina	950.0	950.0	1,600.0
Ohio	1,900.0	2,500.0	2,800.0
Oregon	529.8	739.0	1,414.0
Pennsylvania	800.0	845.0	820.0
Rhode Island	326.5	275.0	375.0
Tennessee	575.0	575.0	2,500.0
Texas	308.3	253.0	399.0
Utah	120.0	550.0	800.0
Virginia	900.0	900.0	1,380.0
Wisconsin	535.0	725.0	1,669.0
<b>Total</b>	<b>20,969.5</b>	<b>33,637.7</b>	<b>54,709.0</b>
<b>Average</b>	<b>635.4</b>	<b>1,019.3</b>	<b>1,657.8</b>

\*The 33 states in which NASDA data are available for each period: FY84-88

Source: Morrison, 1990.

Jersey, Tennessee, Maryland, Indiana, Wisconsin, Iowa, and New York.<sup>8</sup> These trends are also reflected in the number of state employees in international program activities. For example, the international staff in California grew from seven in 1984 to about 35 in 1988. Similar growth was recorded in New Jersey (from 10 international staff in 1984 to 30 in 1988), Kansas (from three to 13 staff), and Indiana (from 12 to 20 full-time international staff). As indicated in Table 7.4, the average number of international program staff for those states reporting has increased from 9.5 persons in 1984 to 13.8 persons in 1988.

The number of state overseas trade offices has also grown. As illustrated in Table 7.5, several states, such as California, Illinois, Indiana, Minnesota, Oklahoma, and Virginia, have been particularly active in establishing foreign offices. In overall terms, there has been an increase in the number of state overseas trade offices from a total of 56 offices in 1984 to 132 in May 1989.

Before examining the new state policy initiatives, it is important to note that relatively little research has been undertaken, at either the federal or state level, concerning just how effective such international programs have been in assisting general economic development. This is true in terms of both the precise effects of promotional activities on exports, as well as how efficient such activities are in producing desired economic growth. It is true that the rapid increase in state expenditures for international promotional activities is a relatively recent phenomenon rendering it difficult to evaluate the precise effects of such activity. But it is also true that not much effort on the part of state policymakers has been expended in actually attempting such an evaluation.<sup>9</sup>

## **AN OVERVIEW OF STATE PROMOTIONAL ACTIVITIES**

Individual state programs include a wide range of activities. Some states, such as California and New Jersey, have carefully planned the growth of their activities while other programs more or less emerged as ad hoc extensions of existing industrial policies. Generally, state international programs may be divided into four broad categories: technical assistance, overseas offices and participation in trade shows, market research, and financial assistance.<sup>10</sup>

In terms of technical assistance, all states now provide individual firm or group counseling as to how to enter and succeed in export markets, how to obtain good legal services, and other specific issues related to

Table 7.4. *State International Trade Staff Levels FY84, FY86, FY88*

State	FY84	FY86	FY88	Change 84-88
Alabama	14	18	18	4
Alaska	n/a	11	14	n/a
Arizona	5	5	6	1
Arkansas	9	11	13	4
California	7	14	35	28
Colorado	4	7	7	3
Connecticut	9	13	14	5
Delaware	n/a	1	2	n/a
Florida	36	38	30	-6
Georgia	18	18	26	8
Hawaii	5	6	6	1
Idaho	0.5	0.7	5.5	5
Illinois	31	31	35	4
Indiana	12	15	20	8
Iowa	6	8	12	6
Kansas	3	6	13	10
Kentucky	5.5	n/a	11	5.5
Louisiana	n/a	3	13	n/a
Maine	0.5	n/a	4	3.5
Maryland	n/a	18	18	n/a
Massachusetts	5	7	7	2
Michigan	21	21	30	9
Minnesota	n/a	41	35	n/a
Mississippi	10	9	9	-1
Missouri	10.5	13	17	6.5
Montana	1	1	4	3
Nebraska	5	2	2	-3
Nevada	0.5	0.5	2	1.5
New Hampshire	1	n/a	1	0
New Jersey	10	10	30	20
New Mexico	3	n/a	2	-1
New York	37	38	39	2
North Carolina	13	13	20	7
North Dakota	1	1	1	0
Ohio	39	39	30	-9
Oklahoma	11	n/a	11	0
Oregon	11	14.5	14.5	3.5

Pennsylvania	12	20	12.5	.5
Rhode Island	4.5	4.5	5	.5
South Carolina	7	n/a	10	3
South Dakota	.5	1	4	3.5
Tennessee	3	3	8	5
Texas	7	7	12	5
Utah	6	8	12	6
Vermont	.5	n/a	1	.5
Virginia	14	14	21	7
Washington	n/a	10	22	n/a
West Virginia	.5	1	3	2.5
Wisconsin	7	10	20	13
Wyoming	n/a	3	4	n/a
<b>Total</b>	<b>406.5</b>	<b>515.2</b>	<b>691.5</b>	<b>177</b>
<b>Average</b>	<b>9.5</b>	<b>12.0</b>	<b>13.8</b>	

Source: Morrison, 1990.

undertaking business abroad. According to a survey by NASDA, the number of such state-sponsored counseling sessions ranged anywhere from 10 to 350 per month with an average of 41 such sessions by each reporting state's international office.<sup>11</sup> This level of activity is significant given the needs of many small and medium-sized businesses unaccustomed to export markets.

Another form of technical assistance of growing importance to state international offices is the linked "trade leads" and "foreign buyers" programs. Trade leads programs, as the name suggests, attempt to identify concrete sales opportunities; this involves foreign market research by state development agencies and the use of market data available from the United States Foreign and Commercial Service (US/FCS). Similarly, foreign buyers programs attempt to match state-based firms with foreign firms interested in their products or joint ventures. In all, over 80 percent of state trade offices reported that their activities included some form of trade leads/foreign buyer programs in 1988.<sup>12</sup>

Also according to NASDA's 1988 survey, 47 states sponsored international trade seminars and/or conferences with an average of 17 such conferences coordinated per state. A total of 835 state-based seminars/conferences were reported for that year, 25 percent of which were sponsored totally by the state reporting and 75 percent of which were

Table 7.5. *The Growth in Numbers of State Overseas Trade Offices*

State	FY84	FY86	FY88	May '89*
Alabama	5	5	5	5
Alaska	1	2	2	2
Arizona	0	0	1	1
Arkansas	1	2	3	3
California	0	0	2	3
Colorado	0	0	2	2
Connecticut	1	2	2	2
Delaware	1	0	0	2
Florida	2	3	4	4
Georgia	3	4	4	4
Hawaii	0	0	0	2
Idaho	0	0	1	1
Illinois	4	5	6	7
Indiana	2	3	4	6
Iowa	1	2	3	3
Kansas	0	1	2	2
Kentucky	1	1	2	2
Louisiana	1	2	4	4
Maine	0	0	0	0
Maryland	2	2	2	2
Massachusetts	0	0	0	2
Michigan	2	2	3	4
Minnesota	2	2	2	8
Mississippi	0	0	4	4
Missouri	2.5	2	3	3
Montana	0	0	2	2
Nebraska	0	0	0	0
Nevada	0	0	1	2
New Hampshire	0	0	0	0
New Jersey	0	0	2	2
New Mexico	1	0	0	0
New York	5	6	5	5
North Carolina	1	1	4	4
North Dakota	0	0	1	1
Ohio	2	2	3	4
Oklahoma	0	1	5	5
Oregon	0	1	3	3
Pennsylvania	4	4	3	3



Rhode Island	2	1	2	2
South Carolina	2	2	2	2
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	1	1	1	2
Utah	1	1	3	3
Vermont	1	1	2	2
Virginia	2	2	2	5
Washington	1	1	1	1
West Virginia	0	0	0	0
Wisconsin	1	2	2	4
Wyoming	0	0	1	2
<b>Total</b>	<b>55.5</b>	<b>66</b>	<b>106</b>	<b>132</b>

\*Trade offices as of May '89 (NGA Estimates)

Source: Morrison, 1990.

jointly sponsored events with the federal government.<sup>13</sup> These seminars/conferences are generally designed to provide a forum within which policymakers and consultants can literally coach private business representatives in negotiating tactics most appropriate for foreign markets and in foreign business practices. The most popular approach taken by individual states is to focus such seminars on one, or very few, specifically targeted foreign markets.

The second broad category of state international policy efforts involves the staging of trade shows and the actual establishment of state promotional and trade offices abroad. As indicated already in Table 7.5, there has been a rather prodigious growth in the number of state foreign trade offices since 1984. In general terms, the establishment of such offices by individual states was the logical culmination of the success of foreign trade shows. Indeed, the creation of foreign promotional and trade offices is increasingly the policy tool of choice for state international programs. As NASDA's survey reveals, the foreign location most preferred by states in 1988 was Tokyo, where as many as 32 states reported having established field offices. In the list of preferred locations, Tokyo was followed by West Germany and Taiwan, where 11 states reported having opened trade offices in each case, Belgium and South Korea with 10 state offices each, Hong Kong with eight states

reporting having established offices, and Great Britain with seven states having reported the establishment of trade offices. Other preferred locations included Canada, Mexico, and China.<sup>14</sup>

While originally established with a public relations mission, most state foreign offices now gather and disseminate foreign market data. As a result, the discussion of foreign trade offices dovetails nicely into the third broad category of state international policies: research and dissemination or "public outreach." The most important state policy tools within this category are the development of export-import directories both for use by state firms and potential foreign buyers and investors, and more specific state-published guides to exporting procedures, often targeting particular foreign markets. As many as 36 states reported publishing export-import directories, and 34 states reported publishing export guides in 1988.<sup>15</sup> Many state international offices are also beginning to publish more general international newsletters with information on foreign markets, new export procedures, business contracts abroad, and so on, on an established periodic schedule.

The last category of state international policy initiatives concerns financing. As Bartsch et al. point out, securing capital to finance international trade is a major obstacle to expanding firm activity abroad.<sup>16</sup> This is especially true for small and medium-sized firms that have not traditionally been able to secure federal assistance—mainly from the Export-Import Bank—to the same extent as large firms. Because of this relative scarcity of capital, and because export financing is more complex than conventional financing, given the necessity for such things as preshipment loan-loss insurance and arranging credit from foreign sources, many states have found it necessary to assist local firms wishing to export. Indeed, financial incentives for export are one of the fastest growing components of state international programs.

To minimize the impact on state budgets, export financing programs leverage private resources through vehicles such as loan guarantees, exporter guarantees, and insurance against political risk.<sup>17</sup> As of 1988, as many as 27 state trade development offices reported to NASDA that their state had passed some form of legislation to provide export financing. Of these states, 22 already had export financing programs in place with a total of over U.S. \$32 million allocated for this purpose. According to NASDA's survey, financial guarantees were the financial policy tools most used by individual states.<sup>18</sup>

There is nonetheless much variation in the ways in which states offer financial guarantees for export purposes. To provide some idea of this

variation, as well as to determine more precisely how specific states have actually extended such guarantees, we will describe briefly two specific programs that have been relatively successful.

Minnesota was the first state to develop an export financing program. Initiated in 1983, the Minnesota Export Financing Authority (MEFA) is designed to provide assistance to small and medium-sized firms seeking to enter foreign markets. MEFA provides pre-export loan guarantees for working capital loans needed for the production of goods already ordered by foreign buyers. These loan guarantees can cover up to 90 percent of such capital costs (to a maximum of U.S. \$250,000) and generally extend over the period from the conclusion of the sales agreement to the actual time of delivery. MEFA also holds an insurance policy with the Export-Import Bank, which enables it to extend post-export insurance to small and medium-sized firms that run the risk of possible foreign buyer default.

So far, MEFA has approved 22 loan guarantees of over U.S. \$8 million and has also accommodated a wide variety of individual export firms with financial counseling. The program as a whole has been successful in promoting exports, especially from smaller firms. It has also been relatively cost effective. While the budget of the MEFA program was originally appropriated directly from Minnesota's general fund at the level of U.S. \$2 million, it has subsequently been able to reduce this direct state budgetary role due to operating surpluses. The direct state budgetary role in MEFA is now only U.S. \$1 million (as of 1988).

Rather than provide the full-range of financial assistance, Iowa's Export Finance Interest Buydown Program is more specifically geared to reducing interest costs of private loans for export purposes. Created in 1985, this Iowa project remains the only state-financed export interest buydown program in the country. To be eligible for the program, state firms must meet one of the following four criteria: they must be new to the export market; intending to export a new product; actually experiencing some new competitive pressures; or intending to expand their current sales into a new foreign market. From the state appropriated annual budget of U.S. \$1 million between 1986 and 1988, Iowa's program has assisted 20 individual firms with 41 grants. In total, the program has supported an estimated U.S. \$12.9 million in export sales over the same period. Unlike Minnesota's loan guarantee program, however, the Iowa Buydown Initiative will remain wholly dependent upon continued state appropriations. Such a program nevertheless remains attractive to other

states because of the ease by which it can be administered and coordinated.<sup>19</sup>

### **SOME IMPLICATIONS OF STATE ACTIVISM**

It is clear that U.S. states have assumed an increased role in promoting their local economies on an international scale. As we have argued, this new and rapidly expanding role for state policymakers is more or less the result of the increased importance of exports to U.S. growth and fiscal constraints on federal activism. States feel compelled to assume a more substantial role in promoting economic development, and rapid changes in the global economy have necessitated much greater emphasis on international competitiveness.

The states have assumed this expanded international role rapidly and with vigor. Although the efficiency of state programs is difficult to gauge, most states have been quick to recognize this new global context and have actively sought a greater international role for local firms. Indeed, it appears that state governments are now at the forefront in promoting the international competitiveness of U.S. firms.<sup>20</sup>

This last observation points to a major shift in the roles of federal and state governments. With very little coordination from Washington, states increasingly conduct their own export trade and investment policies. It appears that the federal government is willing to accept a greater state role in defining U.S. export marketing efforts.

State policymakers continue to rely on national data sources for information about foreign markets and international industrial trends, and the US/FCS is attempting to adapt its information banks to the growing needs of state development offices. Similarly, Washington has put some pressure on the Export-Import Bank to make its resources more available to smaller, regional firms either directly or through joint programs such as the Minnesota Export Financing Authority.<sup>21</sup> Other such arrangements, which combine Export-Import Bank and state funds, have been developed as pilot projects in California, Massachusetts, and Maryland.

The prevailing conception in Washington of the new international economic role of individual states is largely one couched in an understanding of the budgetary necessity of such state activity and the ideological notion that the states are closer to the action. It is often argued, both in Washington and from many state capitals, that state policymakers know more about the international competitive needs of firms within their boundaries than Washington bureaucrats. Promoting exports through

international marketing, therefore, should be the purview of state officials in the first instance. Washington should continue to assume a facilitating role with regard to information and finances.

Indeed, this is the type of federalism being promoted by the National Governors' Association (NGA) and, less specifically perhaps, the National Association of State Development Agencies. It also has the general support of the Republican administration in Washington. In a report published by the NGA, "Shifting Responsibilities," the author is quite specific in suggesting that the new functional roles now emerging between Washington and state economic development agencies should be institutionalized. According to this author, Washington should set national priorities and policies with regard to trade imbalances, undertake official negotiations with other sovereign states, provide the legal framework for international trade, manage exchange rates, and provide a nationwide trade information gathering. Washington would also remain an important source of trade financing.<sup>22</sup>

States, on the other hand, would continue to play a greater role in actual trade and investment development. State officials simply know more about specific private sector needs, they can deliver policy initiatives in a more flexible and customized manner, and they can better gauge the impact of changes in the global competitive environment on individual firms. State officials are thus better able to formulate effective policy measures in a timely manner.<sup>23</sup>

## EMERGING ISSUES

The shift in responsibilities from Washington to the states highlights several issues for the 1990s—some administrative and others with more significance for equity among the states. First, as Washington continues to promote "fend-for-yourself"<sup>24</sup> federalism, there will be considerable duplication in policy efforts both between Washington and the states and among individual states. Duplication in foreign market research, foreign buyer/seller networking, and other types of market research and dissemination is inherently wasteful. Washington's overall lack of coordination of such efforts simply fosters such a waste, and it was only in 1987 that proposals were offered—i.e., in an NGA publication<sup>25</sup>—to promote a more efficient division of labor between Washington and the states in this regard. Until such recommendations are acted upon, there will continue to be much duplication to the detriment of those states least able to afford extensive research on foreign market opportunities.

This last observation raises another issue—the rather wide variation in the capability (defined here as the extent of financial, institutional, and personnel resources) of individual states. While all states have increased their export development efforts, it is becoming clear that relatively few states are capable of sustaining large efforts. California, Florida, New Jersey, and New York certainly have advantages over Wyoming, New Mexico, North Dakota, and Maine. Generally, these advantages reflect disparities among the states in size and in income levels and wealth. A relative hands-off approach to state economic development efforts in Washington, coupled with a shift in the locus of initiative from Washington to the states, will only exacerbate regional differences in economic development opportunities.

## NOTES

<sup>1</sup>Other analyses of these emerging trends can be found, for example, in Peter K. Eisinger, *The Rise of the Entrepreneurial State* (Madison: The University of Wisconsin Press, 1988); R. Scott Fosler, ed., *The New Economic Role of American States* (New York: Oxford University Press, 1988); Earl H. Fry, "State and Local Governments in the International Arena," *Annals of the American Academy of Political and Social Science* 509, May 1990, 118-27; Jeffrey S. Luke, Curtiss Ventriss, B. J. Reed, and Christine M. Reed, *Managing Economic Development: A Guide to State and Local Leadership Strategies* (San Francisco: Jossey-Bass, 1988).

<sup>2</sup>*Economic Report of the President, 1991*, Tables B-76, B-79, and B-80.

<sup>3</sup>Allen Unsworth and Barbara N. McLennan, "Exports and the U.S. Economic Outlook," in U.S. Department of Commerce, *U.S. Industrial Outlook 1990* (Washington, D.C.: U.S. Department of Commerce, 1990), 16-18.

<sup>4</sup>Luke et al., 9.

<sup>5</sup>Wayne M. Morrison, *State International Trade Programs* (Washington, D.C.: Congressional Research Service, February 11, 1990), Table 6, PCRS-24.

<sup>6</sup>See Eisinger, Luke et al., Dewitt John, *Shifting Responsibilities: Federalism in Economic Development* (Washington, D.C.: National Governors' Association, 1987); and National Association of State Development Agencies (NASDA), *State Export Program Database* (Washington, D.C.: NASDA, 1988).

<sup>7</sup>Luke et al., Chapter 7.

<sup>8</sup>Morrison, Table 2, PCRS-20; see also, NASDA, 506.

<sup>9</sup>For a first attempt, see Luke, Chapter 7.

<sup>10</sup>NASDA; and Charles Bartsch, Marian Barber, and Margaret Quan, eds., *The Guide to State and Federal Resources for Economic Development* (Washington, D.C.: Northeast-Midwest Institute, The Center for Regional Policy, 1988).

<sup>11</sup>NASDA, 8.

<sup>12</sup>*Ibid.*, 10-11.

<sup>13</sup>*Ibid.*, 11-12.

<sup>14</sup>*Ibid.*, 16.

<sup>15</sup>*Ibid.*, 7.

<sup>16</sup>Bartsch et al., 194.

<sup>17</sup>*Ibid.*, 194.

<sup>18</sup>NASDA, 13-14.

<sup>19</sup>More detail on these and similar programs can be found in Bartsch et al., Luke et al., and NASDA.

<sup>20</sup>See John M. Kline, *State Government Influence in U.S. International Economic Policy* (Lexington, Massachusetts: Lexington Books, 1983); and Luke et al.

<sup>21</sup>See the testimony of public and private sector exporters in *How to Increase Small Business Participation in Export Markets*, hearings before the Subcommittee on Export Expansion, Committee on Small Business, United States Senate, April 29-30, 1987.

<sup>22</sup>Dewitt John, *op. cit.*

<sup>23</sup>*Ibid.*, 22-23, 35-40.

<sup>24</sup>John Shannon, "The Return to Fend-for-Yourself Federalism: The Reagan Mark," in Advisory Commission on Intergovernmental Relations (ACIR), *Perspectives on a Decade of Change* (Washington, D.C.: ACIR SR-11, 1989), 119-22.

<sup>25</sup>Dewitt John.

# *United States' Federalism and Foreign Policy*

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The bicentennial of the U.S. Constitution highlighted both the stability and flexibility of the nation's federal system. Two centuries is not long when compared to the history of many other countries, but the exponential rate of technological and social change, particularly over the last several decades, nonetheless placed enormous adaptational demands on the country's basic governmental structures. While these pressures fell in many areas, until recently the foreign policy realm had remained relatively free from challenges to the traditional division of governmental powers. In particular, national institutions exercised nearly exclusive control over U.S. foreign policymaking and implementation, a field in which most observers considered subnational government activity highly inappropriate if not, in fact, constitutionally prohibited.

Beginning in the mid-1970s, and increasing rapidly over the last decade, the validity of this historical assumption changed under the impact of global forces as they interacted with the U.S. federal structure. The content of foreign policy gradually shifted to incorporate more economic concerns where subnational governments possess traditional interests and prerogatives. This blurring of the separation between "high" and "low" politics in the international arena led to an overlapping of domestic and foreign policy interests within the federal system. As economic matters gained greater prominence in international statecraft, both established and new subnational actors became engaged in foreign policy matters, first in a search for economic benefits and later in pursuit of enhanced political influence.

The tale of these changes is still being written. Federal relationships are generally characterized by practical accommodations reached in the context of applied programmatic needs. Since early subnational involvement in foreign policy was generally supportive of national government goals, major institutional confrontations and adjustments were



avoided or deferred. More recently, however, the increased frequency and diversity of subnational foreign policy actions has refocused attention on questions of institutional prerogatives and responsibilities. The growing role of other countries' subnational governments, including their outreach to counterpart institutions in the United States and elsewhere, further reinforces the interest in federal relationship issues.

A careful examination of the expanding role of U.S. states in American foreign policy suggests that the time is ripe to reassess federal institutions and relationships in this area. A direct and concerted effort to define the nature of legitimate subnational participation in foreign policy matters could exploit federal system strengths, enhancing cooperative efforts while channeling potential conflicts through consultative mechanisms.

Global political and economic interdependence stimulates the negotiation of new international accords, but it also requires the creation of societal adjustment and support mechanisms that are often best developed and implemented by subnational entities. In other words, national adaptation to international change can depend heavily on the responsiveness of subnational governments, which in turn operate within the framework of the nation's federal structure. The combination of stability and flexibility that has undergirded this structure for more than two centuries must continue to provide strength and support as the nation defines its role in the larger world community of the 21st century.

This chapter opens with an historical capsule on the states and foreign affairs before examining actions in the 1970s that established the early pattern for state influence. State export promotion interests dominated this initial stage, affecting U.S. international economic policy through both indirect program and direct political channels. The next section outlines the contemporary state foreign policy role, assessing programs and policy actions as they developed over the 1980s. State trade interests became intertwined with U.S. negotiating positions during this period, while foreign investment stirred national controversy and the states ventured further into the foreign political realm. Finally, an attempt is made at projection and prescription, arguing that greater state involvement in foreign policy will necessitate further political and institutional adjustments within the U.S. federal system.

## THE ORIGINS OF CHANGE

The history of federalism in American foreign policy contains a few interesting episodes, especially in the Republic's early days, but the origins of the relationship's current evolution are global stimuli that developed in the mid-1970s. In the international political calculus, state institutions initially responded as dependent variables to international, primarily economic, forces. Over the last quarter century, however, states progressively expanded their participation in foreign policy matters, creating a dynamic feedback link through which state actions can now have independent, direct, and indirect effects on certain foreign policy outcomes and perhaps on elements of the international political structure itself. The development of this state role also coincides with the national government's own adjustment to global interdependence, thereby creating the potential for domestic institutional, if not systemic, modifications to historical federal relationships.

The legal and historical basis for a state foreign policy role is weak at best. The Constitution presumably precluded the states from independent involvement in foreign affairs, assigning to the executive branch most powers relevant to the conduct of foreign policy, while dividing treaty-making authority between the executive and the Senate. States are explicitly denied the right to enter into treaties, alliances, confederations or to enter into any agreement or compact with a foreign power without congressional consent. These items covered most of the practical instruments used at that time in the conduct of foreign policy.

States' rights battles raged for several decades over the supremacy of treaties in matters beyond the scope of the expressly granted powers of the national government, but these instruments were held valid even when they restricted or preempted state actions. Sporadic disputes that challenged the national government's enforcement powers also occurred through the early 1800s, such as South Carolina's imprisonment of black British sailors in contravention of a bilateral commercial convention and its declared nullification of a national tariff as applied within the state's borders. The Civil War's outcome, including the South's failure to gain strong foreign support and diplomatic recognition, effectively ended these challenges, despite minor controversies that still erupted from time to time when state regulatory actions provoked foreign protests.<sup>1</sup>

This basic balance (or rather imbalance) of constitutional authority and enforcement powers in foreign policy matters has not changed. Instead, the content of foreign policy itself has evolved, creating a

different overlay effect on the federal structure, which alters the practical reality of foreign policymaking and implementation as it occurs in the U.S. federal system. The key developments are not legal, but rather political and economic.

The central factor initiating these changes was the emergence of increased global interdependence. The unprecedented growth in economic exchange among nations played a particularly important role, tying each to the others in a complex network that redefined the relationship between "Power and Interdependence."<sup>2</sup> The traditional distinction between the "high" politics associated with military issues and the "low" politics of socio-economic dealings progressively lost much of its relevance. Economic considerations gained greater prominence in foreign policy circles while, within the United States, international commerce began to play an increasingly important role in the general health and welfare of local and state economies.

During the 1970s, international commerce penetrated deep into the U.S. economy, in the process overlapping many traditional areas of state economic and regulatory authority. Local, state, and regional growth prospects and socio-economic adjustment needs became inextricably tied to international economic forces. These changes merged international and domestic concerns, creating a type of "intermestic" policy area.<sup>3</sup> During this initial period, state governments were not seeking to extend their influence into the foreign policy realm; rather, they were reacting to the impact of foreign elements on their internal welfare. Most state actions attempted to protect or enhance local economic interests, primarily by promoting exports, discouraging import dislocation, and attracting new foreign investment to the state.

As outlined in earlier chapters, the growth of state international trade and investment programs has been impressive, especially during the 1980s. Overseas missions and permanent offices projected state interests into the international arena. At home, increased staff and budgetary allocations allowed an expanding array of programs ranging from disseminating trade leads and providing financing assistance to infrastructure improvements and worker training for new foreign investors. These measures were essentially seen as an extension of traditional state economic development efforts to reflect the new importance of international factors in the U.S. domestic economy.

How do these economic promotion programs translate into state government involvement in U.S. foreign policy? The answer to this question can be traced to the ambiguous interactions between program

and policy, where interests arising from the former bring involvement in the latter. Since most of these changes are new, the concept of state participation in foreign policy is still controversial, lacking clearly defined limits and established processes. However, given an understanding of the origin and motivations for state involvement, an examination of the various actions and reactions that have marked state government activity over the last two decades can reveal the shape of a role for the states in U.S. foreign policy.

### **ACTIONS AND REACTIONS— ESTABLISHING THE EARLY PATTERN**

The early reaction of state governments to the growing impact of international interdependence was both diverse and dynamic. States chose different routes and timetables for their response to these external forces, reflecting the particular mix of social, economic, and political interests that were dominant within their jurisdiction. Few of these initial ventures were portrayed or even thought of as an attempt to participate in U.S. foreign policy, but this was inevitably the result as state economies were drawn further and further into interdependent global relationships. In pursuing their self-interested objectives, state governments influenced U.S. foreign policy directly through inputs to the policymaking process and indirectly through the effects (both intentional and secondary) that state programs had on the effective implementation of that policy.

#### **Indirect Program Impact**

Beginning with small, experimental efforts scattered in various states across the nation, economic development programs quickly grew in size and scope until their aggregate expenditures and influence rivaled the U.S. Commerce Department's international business promotion programs. State activities clearly dominate public initiatives on attracting foreign investment, where the national government assiduously holds to a neutral policy regarding nonsecurity related investment flows.

State programs indirectly support the attainment of national trade policy goals through their assistance to state export businesses, particularly small and medium-sized firms that national programs often cannot reach effectively. Federal interaction in this field is highly cooperative, marked by an increasing number of joint or closely coordinated programs.

The premier example of these arrangements may be the pilot Umbrella Policy program worked out between the U.S. Export-Import Bank (Eximbank) and a number of state and municipal trade promotion departments.

Initially, national government officials worried that the proliferation of state trade financing programs could jeopardize U.S. multilateral commitments to restrain competitive export financing. State authorities, meanwhile, struggled to provide adequate financing for the new and smaller exporters being energized by state export promotion efforts. The joint Umbrella Policy program, which authorizes approved state and local agencies to commit allocated Eximbank resources for trade financing packages, combines the advantages of decentralized administration with national resource capabilities, all within a common policy framework.

Other trade promotion activities where state initiatives and national responses are mutually reinforcing include the coordination of trade missions and fairs, the collection and dissemination of trade leads and foreign economic data, and the operation of overseas offices by state authorities. While national and state officials still argue about the means, mechanisms, and specific allocation of efforts among trade promotion programs, the overall relationship is cooperative, based on a coincidence of interests regarding export promotion objectives.

By contrast, the parallel growth in state investment promotion activities has led to a different federal relationship pattern. Official U.S. policy proclaims an "open door" and national treatment for foreign investors but eschews the use of any particular incentives or other promotional devices to attract foreign investment. Most states actively seek to attract foreign investors, often using tailored incentive packages as part of their promotional campaign. These actions exceed national policy guidelines and, in contrast to trade promotion programs, generate a competitive environment in which the success of one state is perceived as a loss by the others in the scramble to gain new investors and stimulate economic growth.

One level of concern about state investment incentives focuses on estimates of national economic welfare. That is, if the foreign investment would have been made somewhere in the United States without state intervention, the use of incentives could constitute a "waste" of public resources when viewed from a national rather than a subnational perspective. In broader foreign policy terms, however, state programs also run counter to the declared U.S. objective of restricting the use of governmental investment incentives. This foreign policy goal, now being

actively pursued by U.S. negotiators in the GATT (General Agreement on Tariffs and Trade), OECD (Organisation of Economic Co-operation and Development), and other multilateral forums, is inherently linked to state promotional programs. The successful attainment of international investment accords and their specific content and application will both influence, and be influenced by, the manner in which the federal system manages these overlapping "intermestic" policy interests.

A byproduct of state trade and investment promotion programs that also has foreign policy implications is the increase in direct contacts between state officials and foreign governments. State and local government leaders often head delegations on overseas trips in search of new business opportunities and host similar visits by officials from other countries. In many cases these meetings have resulted in agreements signed between state representatives and foreign officials that set a framework for further cooperation in social, cultural, or economic relationships. Examples range from an early 1970s cooperation and fraternity agreement between North Dakota and Egypt, to a 1980s science and technology accord between Ohio and China's Hubei Province providing for special projects and an exchange of experts in such fields as laser processing and welding, new polymer material, computerized manufacturing, and animal husbandry.

The proliferation of these contacts sparked some concern among U.S. foreign policy officials who worried that direct subnational dealings with foreign governments might prove confusing or even counterproductive to the nation's foreign policy goals. A study by a U.S. foreign service officer prepared in the mid-1970s for the Department of State's Senior Seminar in Foreign Policy Program examined the growth in overseas state activities but concluded that these activities generally supported national objectives and did not appear to constitute a threat to the conduct of U.S. foreign policy.<sup>4</sup>

While periodically cautioning that the nation cannot have 50 secretaries of state in foreign policy matters, national government officials have not challenged subnational prerogatives to carry out foreign visits or even conclude formal bilateral agreements. Constitutional provisions could be interpreted as implying the need for congressional consent for any such accords, but the last legal challenge to such a compact dates from the mid-1800s.<sup>5</sup>

Rather than worrying about a loss of authority, national leaders appear to view these subnational contacts as helpful in establishing additional linkages between the United States and other nations without

taxing the limited time and resources of foreign policy officials. The operative precedent here may be the long and successful history of cross-border contacts between state and provincial leaders in the United States, Mexico, and Canada. Periodic meetings and agreements between subnational officials in North America have been instrumental in facilitating social and economic exchanges across national boundaries, while also resolving many incipient problems before they could develop into major bilateral issues. An earlier chapter examines a particularly successful example of this cross-border relationship between U.S. states and Canadian provinces.

A related pattern of reference for subnational agreements with foreign governments is the Sister State and Sister City Programs, which increasingly have strong economic motivations to complement their social and cultural objectives. These exchanges can have a direct bearing on foreign policy issues, however, as became clear recently during meetings between subnational officials and foreign government leaders in such sensitive regions as Nicaragua, South Africa, the West Bank, the former Soviet Union, and China.

### **Direct Policy Input**

The growth in state promotional programs also led to greater interest in the formulation of national policies that affect the relative success of state efforts. National policy establishes the overall framework within which state programs must operate while also determining the allocation of resources that can supplement state efforts. Recognizing the potential for common interest positions, state governments began utilizing interstate organizations to lobby national policymakers on foreign policy issues that influence the effectiveness of state economic programs.

The initial focal point for interstate cooperation had been the National Association of State Development Agencies (NASDA), which was useful for exchanging information and experiences among the diverse state trade and investment programs but had little influence in broad policy matters. The formative event in the development of state policy involvement occurred in 1978 when the National Governors' Association created a new Committee on International Trade and Investment in response to a suggestion by former Georgia Governor and then-President Jimmy Carter. This action established a mechanism that was both high-level and specifically directed at policy matters rather than program coordination.

President Carter knew first-hand about state export promotion efforts and recognized the potential for mobilizing political support for the administration's trade policy. Indeed, the National Governors' Association (NGA) committee did prove to be a valuable ally on many issues, supporting such policies as the multilateral trade negotiations, improved ties with Canada and Mexico, and the creation of export trading companies. The governors pushed even further than the administration wanted on some items, however, including the expansion of trade information and financing programs, and the reduction of export control restrictions. The NGA also adopted positions on a range of other international issues including overseas bribery regulations, refugee and immigration policy, and international antitrust standards.

This type of national policy role is an extension of earlier state government participation in the policymaking process to represent their interests on revenue-sharing measures or other initiatives affecting state welfare. In contrast to these actions, however, involvement in trade issues brings the states directly into the formulation of U.S. foreign policy as a logical result of the development of state trade promotion programs and with the general encouragement of national government leaders.

A different early example of state involvement in foreign policy that illustrates the overlapping of domestic and international interests is the debate over unitary taxation. This dispute, which raged for nearly a decade, pitted presidential foreign policy positions against states' rights interests in a direct state-versus-national policy conflict. State action centered on defending existing policy prerogatives against an attempt by the national government to restrict state powers in line with internationally negotiated standards and commitments.

Major trading partners were pressuring the U.S. government to restrict the manner in which some state governments taxed international corporations under a unitary business formula that could result in double taxation of those enterprises. Court challenges, national legislative proposals, and even a bilateral taxation treaty negotiated with Great Britain failed to place effective restrictions on these state practices.<sup>6</sup> While states have now largely stopped applying this tax formula to the international income of foreign corporations, they have not abandoned their claimed right to do so should such a policy be deemed economically advantageous for the state.

A third early example suggests a different way for states to affect foreign policy. Several states seized the initiative in challenging international boycott policy when the Arab boycott of Israel gained new



leverage in the 1970s from OPEC-generated oil revenue. While U.S. policy opposed compliance with this boycott's pressures, Congress and the president were deadlocked over proposals to strengthen policy enforcement as applied to corporate actions. A number of key trading states including New York, California, Illinois, Ohio, Massachusetts, and Maryland passed legislation using state antitrust and civil rights statutes to penalize companies subject to state law who complied with boycott pressures.

The real aim of these measures was not so much to counteract the boycott directly, but rather to create additional pressure on national government authorities to enact a new and preemptive U.S. law in order to eliminate the confusion created by the proliferation of individual state statutes.<sup>7</sup> In this case, the states influenced foreign policy indirectly through unilateral state action rather than channeling their representation through normal policymaking channels. The actions furthermore occurred at a critical time during sensitive negotiations on a Middle East peace initiative.

### **SHAPE AND SIGNIFICANCE—ASSESSING THE CONTEMPORARY ROLE**

As has been discussed, the roots of state involvement in U.S. foreign policy are anchored firmly in state government responses to the growing domestic impact of international economic forces during the 1970s. Since that time, the range of contemporary state activities has increased greatly, affecting a broadening array of foreign policy matters. The shape of a state government role is beginning to emerge from this tangle of separate policy activities, raising longer-term questions about the effect and significance of state foreign policy involvement on the U.S. federal system.

#### **State Programs**

The growth of state trade and investment promotion programs continued apace throughout the 1980s, assuming greater importance in the face of national budgetary cutbacks and the dramatic increase of foreign direct investment in the United States. Complementing these activities is the emergence of new economic development efforts, often motivated by competitiveness concerns tied to advanced technology requirements and international business pressures. These programs are further evidence

of the interdependent ties between foreign and domestic economic forces and highlight the reality that states cannot avoid foreign policy-related matters in their pursuit of traditional economic welfare objectives.

The prominence of economic issues among top foreign policy concerns increased over the 1980s in rough proportion to the relative decline in America's global economic position. If the emergence of a trade deficit in the 1970s had drawn the attention of some public officials, the nation's rapid slide from being the largest supplier of investment capital in 1982 to the world's biggest debtor nation in 1986 (a turnaround of more than U.S. \$400 billion in just four years) set off alarm bells in nearly every quarter. Since economic strength had become a more important component of international statecraft, this decline in relative economic power constrained the nation's foreign policy options and instruments.

In trade promotion, state programs assumed a greater relative share of the burden as the spiraling budget deficit precluded major new initiatives by the national government. In fact, the states became vigorous supporters of maintaining at least existing funding for national government programs, resisting proposals by some public officials to transfer even greater responsibilities—but without the accompanying resources—into state government hands. Any early hesitation about the possible encroachment by state programs into areas of national jurisdiction was dismissed, and renewed emphasis was placed on exploiting coordinated or joint program initiatives.

A central conclusion regarding trade promotion activity, therefore, is that state participation in this field of increased practical importance to foreign policy has acquired recognized legitimacy; indeed, states play an essential role within the federal structure's allocation of programmatic rights and responsibilities. The recognition of this role also transfers concurrent legitimacy to related state practices, such as the maintenance of direct contacts between state and foreign government officials that result from trade promotion activities. National government attention has turned increasingly toward bilateral and multilateral negotiations, seeking to advance interests through a reform of the rules that govern the international exchange of goods and services. (Of course, the growth in state trade programs also gives subnational governments an interest and basis for involvement in these international standards-setting discussions as well, as will be discussed in a later section.)

State investment attraction programs grew in tandem with their trade promotion activities, sometimes sharing functions and facilities, such as

in the utilization of state offices in other countries. There were two major differences related to the investment field, however, that served to enhance the prominence and policy impact of state investment actions. First, the continued absence of national investment programs clearly abdicated programmatic leadership to state authorities at a time when the United States' historic position as a net supplier of foreign investment capital was reversed and the country became the favored host location for investors worldwide. Second, the greater inflow of foreign capital led to an incipient public backlash that thrust foreign investment policy high onto the nation's political agenda, leaving state authorities in the midst of a growing controversy over national and international rules to govern investment flows.

Research in the late 1970s indicates that national government officials were generally unaware of most state activities and, while recognizing some potential problems with foreign investment, considered the amounts involved too small to raise any real worries.<sup>8</sup> The basis for this assessment changed rapidly. Foreign direct investment in the United States has increased over 400 percent during the last 10 years. In 1981, inflows of private direct investment exceeded outflows both in the rate of increase and in actual dollar amounts for the first time since early in the century. By 1988, the book value of foreign-owned assets in the United States surpassed the book value of U.S.-owned assets abroad, turning the traditional "home" country for multinational corporations into an equally large "host" nation as well. Suddenly, foreign policy issues that had surrounded the operations of U.S. multinational corporations in other countries began emerging as U.S. domestic concerns in response to activities of foreign corporations now operating throughout the 50 states.

Certainly only a relatively small proportion of this increased foreign direct investment can be attributed to the promotional activities of state governments. Nevertheless, the absence of national government programs focuses attention on state activities whose competitive aspects sometimes lead to highly publicized "bidding wars" for major foreign facilities, bringing disproportionate notoriety to these state efforts. Individual new investments can generate an initial political windfall for the state leader who presides at the opening day's ribbon-cutting ceremony. However, the cumulative effect of these investments will progressively draw the states into broader policy issues concerning the possible regulation or restriction of foreign investment. The "intermestic" elements of foreign direct investment are being woven deep into the fabric of U.S. foreign policy.

A third type of state economic development program, sometimes administratively linked to the trade and investment efforts, is initiatives to improve state adjustment capabilities, stimulate innovation, and improve basic business infrastructure in order to meet the growing demands of international competition. Almost every state now boasts of programs to support advanced technology industries: about one-half sponsor venture capital programs or business incubator projects, and others concentrate on the targeting of depressed economic regions, the mediation of labor-management difficulties, or improvements in education and training institutions.

Whatever label these state efforts may carry, they constitute the country's practical answer to the competitive challenge of foreign industrial policies. As former Pennsylvania Governor and U.S. Attorney General Richard Thornburgh put it, these state programs are "the only real way that we can tackle the overall problems of competitiveness that pose such a challenge to us. Each of the several states is better able to assess its own situation than succumbing to a national planning binge."<sup>9</sup> These initiatives are another way in which the U.S. federal system is responding to the economic challenge confronting the nation as a result of growing world interdependence. Their existence offers a practical alternative to the creation of a centrally planned and administered national industrial policy.

The federal relationship in this field is thus far characterized by the same type of cooperative approach that evolved with relation to trade promotion programs. National leaders recognize the role and legitimacy of subnational programs and encourage both the development and coordination of these efforts. For example, a national Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation was established by the Omnibus Trade Act of 1988. The Clearinghouse is designed to avoid a duplication of efforts while facilitating the flow of useful information throughout the federal system on the design and relative success of subnational competitiveness initiatives.<sup>10</sup>

The relevance of these state programs to contemporary U.S. foreign policy is perhaps best illustrated in the results of some recent public opinion polls. A March 1988 survey conducted for the "Americans Talk Security" project showed that "Worry about whether the United States can compete successfully in the world economy has reached the point where it is, perhaps for the first time, considered a vital issue of national security." A majority of Americans (59 percent) believe economic competitors are a greater threat to national security than military powers

such as the former Soviet Union. A 1989 *Washington Post*/ABC News poll found a similar sentiment, with over 40 percent of the respondents indicating they believed that Japan's economic strength poses a more serious threat to U.S. national security than Soviet military power.<sup>11</sup> The concerns of international economic competitiveness are fast replacing the Cold War's preoccupation with military security as the paramount issues of foreign policy, and states are in the forefront of the nation's programmatic response to the challenges of foreign trade, investment, and general competitiveness in an interdependent world economy.

### State Policy Influence

State government officials continue the practice they began in the 1970s of using established policymaking channels to offer direct input on a range of U.S. foreign policy issues. These representations are usually conveyed through state governors acting individually or in concert through the National Governors' Association and its affiliated organizations. The primary new extensions of state policy influence arise from their greater involvement in international standards negotiations and the emergence of state regulatory issues whose application to foreign investors and internationally traded goods carry the impact of state actions far beyond subnational or even national political boundaries.

State government representatives are now standard and expected witnesses at congressional hearings on foreign trade and competitiveness issues. The states have also made a deeper commitment of staff resources at the less public but equally influential stage of formulating policy proposals. This incorporation of state interests in the policymaking process is not a departure from traditional procedures in the federal system, but rather an extension of those norms to cover a broadening range of overlapping "intermestic" issues.

The value of state participation in these matters is based on the unique perspective that state representatives bring to foreign policy deliberations. State leaders combine the political judgment of publicly elected officials with a greater sensitivity than most national personnel would have to the impact of foreign policy on local private sector activity. For congressional policymakers, "home state" officials represent a particularly important body of politically relevant public opinion, thereby increasing the weight given to state recommendations concerning the desirability and potential effectiveness of various policy and program alternatives.

State evaluations of local and regional needs may contain a stronger element of private sector self-interest than is present in national government assessments, perhaps giving more weight to local interests in the formulation of U.S. foreign policy. State leaders, however, must balance the importance of their foreign economic ties with the adjustment costs arising from growing interdependence. Collectively, the states have supported a mildly liberal position with regard to expanded international trade and investment policy. Their participation in the growing debate over foreign investment in the United States may prove especially critical, both in national political forums and in the education of volatile public opinion regarding the effects of foreign direct investment on the national and subnational economies.

State government actions on the new U.S.-Canada Free Trade Agreement reflect involvement along a continuum of increasingly overlapping domestic and international issues. State leaders were among the early advocates of discussions towards creating a North American free trade area. During negotiations with Canada, state and regional interests were vocal in their concerns regarding such sensitive sectors as lumber, automobiles, and fishing. While these issues presented thorny problems for national government negotiators to resolve, the process helped frame a realistic pact that addresses interlinked trade and investment issues while forging a domestic political consensus strong enough to support legislative approval. If differing regional impacts of the agreement had not been openly confronted in advance, final congressional debate would have been far more controversial and perhaps might have yielded a different outcome.

State leaders in the southwestern border states are playing a similarly important role in supporting the expanded negotiations with Mexico on the North American Free Trade Agreement, without compromising their positions in the process regarding sectoral or other special concerns of particular interest to their states. This involvement may lead state officials to become involved in even broader foreign questions than occurred in negotiations with Canada, especially concerning domestically sensitive customs, immigration, and environmental issues.

State involvement in the formation of U.S. policy on free trade agreements with neighboring countries is in some ways a continuation and expansion of their traditional role in promoting cross-border economic ties. A more novel state policy role is emerging, however, at the multilateral level, particularly in the context of the "Uruguay Round" of negotiations in the General Agreement on Tariffs and Trade (GATT).

The evolution of GATT trade negotiations illustrates the changes occurring in the global economy. Originally centered around talks on reducing tariff levels, the successive rounds have attacked an ever-widening array of trade-related problems that reach further and further into domestic economies. In the last "Tokyo Round," a series of codes on nontariff trade barriers were adopted, including one on government procurement measures that opens up public bidding procedures to companies from other signatory countries. Subnational government procurement was not covered by the code, although federal governments pledged to make "best efforts" to seek the adoption of similar policies by their subnational jurisdictions.

Currently an expansion of the government procurement code is being negotiated that may allow states to adhere voluntarily to the code (similar to national government actions), affirming their obligations through letters and statutes, while covered state agencies are specified in an annex. A 1987 survey found 28 states with product-specific price preferences for items such as steel, beef, and automobiles while six states used comprehensive price preferences for local or U.S. products. In return for bringing these policies into line with the GATT code, states hope to gain access for their firms to subnational government procurement in other signatory countries, such as the European Community's U.S. \$3.5 billion market for paper products.<sup>12</sup>

From a broader foreign policy perspective, this voluntary adherence procedure would accord to individual states a direct decisional role regarding their coverage by an international agreement. Even though the U.S. government supports and adheres to the overall accord, individual state participation would be problematic, based upon their own self-interested calculations—just as is true of national government decisions regarding whether or not to sign the procurement code. The states, in other words, may be given the same type of adherence rights as national governments to this important international agreement.

In addition to government procurement, the states will be directly affected by the Uruguay Round's coverage of trade in services, agriculture, subsidies, and investment. Negotiations on services trade provides an especially good example of how an internationalizing economy can overlap subnational government jurisdictions. States regulate the insurance industry, hold substantial powers with regard to banking and other financial services, and exercise important regulatory functions regarding such services as the legal and health care professions. Under strong pressure from the United States, GATT negotiators are attempting

to forge an international framework for rapidly expanding trade in business services. Since a successful outcome on this objective will necessarily affect state regulatory powers, subnational officials have been drawn directly into the negotiating process.

The National Governors' Association approved a resolution on February 3, 1991, that affirmed its overall support for the Uruguay Round negotiations and recognized the special importance of government procurement and trade in services as issues that affect state government interests. With regard to trade in services, the NGA stated:

Because of the special state regulatory role, it is imperative that the federal government continue to consult fully with Governors or their designees on international rules affecting service industries and that state views be incorporated in the U.S. negotiating position and implementing legislation. The federal government should work with states to develop mechanisms to keep Governors informed on and to solicit their input for any bilateral and multilateral negotiations on international trade in services.<sup>13</sup>

State interest and involvement in international trade negotiations receives international institutional recognition and support through the Intergovernmental Policy Advisory Committee on Trade (IGPAC), a mechanism that enables appointed state, county, and municipal government leaders to provide official advice to the Office of the U.S. Trade Representative (USTR). Formal meetings with the principal members are generally held only twice a year, but staff-level sessions are more frequent. Other informal consultations and exchanges of views occur when USTR officials meet with the standing trade policy committees and staff of the NGA, the National Conference of State Legislatures, and other national and regional state associations. While the IGPAC itself has a somewhat checkered history of use and neglect, its performance and value appear to be improving.<sup>14</sup> Institutionally, creation of the IGPAC provides explicit recognition of the utility of subnational government input to foreign policy negotiations covering a range of international economic issues, and implicit recognition that inadequate consideration of legitimate subnational interests could doom a multilaterally negotiated package in the domestic political approval process.

## OTHER EMERGING ACTIONS AND INFLUENCE

The first wave of contemporary state government involvement in foreign policy is now cresting with the recognition accorded to state trade



promotion activities and the creation of institutionalized channels for state policy input, even to ongoing international negotiations. A series of follow-on actions is building just behind this crest, impelled more by the increased presence of foreign investors within state jurisdictions than by the importance of traditional trade ties. The activities of foreign investors overlap a broader range of state powers, giving those jurisdictions both wider interest and more tools to affect foreign policy choices and outcomes. This increased potential leads some states to attempt expressly to influence foreign political situations, both directly and through the impact of their actions on national policy positions. This rise of subnational participation in foreign policy controversies opens a range of new institutional questions regarding how a national federal system should and will respond to changing role relationships between public and private entities in an increasingly global society.

One set of new state actions centers on issues involving the acceptance and subsequent treatment of foreign investors. Earlier reference was made to state promotional programs that seek to attract new foreign investment, but not all jurisdictions welcome foreign investors, at least not in all sectors of their economy. Real estate has proven particularly controversial as state and local politicians debate the desirable level of foreign ownership, with proposed restrictions on purchases ranging from Midwest farmland to office and tourism complexes in metropolitan centers from New York City to Honolulu. Some of the restrictions and much of the rhetoric about opposition to this investment carries heavy racial overtones, directed principally against Japanese and sometimes Arab investors, while seeming to ignore equally or more prominent British and Canadian purchasers.

The 1980s wave of corporate takeovers and mergers also led a number of states to adopt safeguard measures to protect existing enterprises against hostile takeover bids. These moves were sometimes linked to bids from foreign investors, which seemed to generate even greater public opposition when the targeted company chose to highlight this theme. Organized labor also sometimes focuses on the distinctiveness of foreign-controlled enterprises in labor relations debates, charging them with violations of both the spirit and the letter of U.S. labor regulations. States retain significant authority in the field of labor relations, with differing regional standards arguably an important factor in locational corporate investment decisions. The response of individual state governments to these charges, as well as the increased pressure on national lawmakers to adopt more uniform national norms, will therefore

involve state officials in discussions about how international, national, and subnational labor standards should apply to foreign-employed workers.

A similar hostility is beginning to arise in some jurisdictions where existing foreign investors decide to close down local facilities. A corporation's "foreignness" can generate harsher than normal reactions, especially if the closure decision is seen as coming from the parent company's overseas headquarters where local concerns are subordinated to global profit objectives. The challenge of forging appropriate administrative ties with foreign-owned firms is new for many U.S. jurisdictions. Even a normal increase in plant closures associated with greater aggregate levels of foreign investment in the country will lead to demands for more information disclosure, early notification, consultations on possible adaptation, and assistance for local adjustment to economic dislocation.

Communication with foreign decision makers is inherently more difficult and information-disclosure standards abroad are generally less stringent than U.S. requirements, posing potential conflicts if states attempt to extend their reach beyond their jurisdictional boundaries. A recent Indiana statute combines takeover and information disclosure objectives by requiring any foreign companies involved in takeover bids to report on their foreign capital structure, properties, management, and government contracts or subsidies.<sup>15</sup> This type of reporting on overseas operations recalls the global information demands associated with state unitary taxation regulations and is similar in its extraterritorial reach to some controversial European Community proposals in the labor relations field.

State environmental, product liability, and antitrust regulations may also have a global impact through interlinked trade and investment ties that affect foreign government policies and procedures. A recent illustration of this effect involved the interplay between establishing state, national, and international environmental standards and enforcement mechanisms brought out in the debate over Proposition 128, the California Environmental Protection Act of 1990. The so-called "Big Green" initiative, which was rejected by the voters at the November 1990 election, would have established the nation's strictest pesticides law. The European Community was sufficiently worried about the California initiative that it sent an "Aide Memoire" to the U.S. State Department, with copies to California officials, expressing concern that this action could be "a means of arbitrary discrimination or a disguised restriction on

trade, thereby unjustifiably increasing fragmentation of the U.S. market and adversely affecting international trade."<sup>16</sup>

Environmental issues are under discussion in the GATT trade negotiations, where the EC and other major trading countries are pressing for a final agreement that would bind U.S. state and local regulators as well as the national government. Thus far U.S. officials are maintaining the right of states to enact regulations that may exceed national and international norms, as long as they are not discriminatory and can be scientifically justified. As described by an Environmental Protection Agency official, "the U.S. position in the GATT discussions is that a state may establish its own S & P (sanitary and phytosanitary) measures but it should not be permitted to erect discriminatory unscientific trade barriers any more than the U.S. government or any of our trading partners should."<sup>17</sup> In short, the states should be able to exercise the same basic regulatory powers as national governments within current or future international standards.

The U.S. approach to managing such federal systems' issues is a foreign policy concern for the European Community. The EC letter on the "Big Green" initiative also noted other ongoing discussions of international standardization issues involving industrial as well as agricultural issues. While expressing appreciation for the general U.S. dialogue on these matters, the letter contained a warning.

This encouraging trend on the international level may be endangered by unilateral initiatives by individual States of the United States. In particular, there is a risk that standards could be set at State level which deviate from internationally agreed standards. Similar considerations apply to ongoing discussion with IMO and in UNEP, e.g., with respect to oil spills and control of trade in dangerous substances.

The European Community therefore urges the Department of State to take the appropriate steps to ensure that the adoption of State legislation does not create conflicting legislative obligations and uncertainty for economic operators, does not lead to measures in conflict with existing international obligations of the U.S. and does not raise the question of the credibility of commitments entered into by the U.S. as a result of international negotiations.<sup>18</sup>

Of course, the European Community may not always find U.S. state regulatory actions alarming, even when they are at variance with U.S. national positions. The involvement of the Texas Agricultural Commissioner in a recent U.S.-EC trade dispute substantially affected bilateral

negotiations, undermining the initial U.S. negotiating posture and helping to shape at least a temporary compromise on the issue. In this case, state officials became direct participants in the foreign policy process, affecting the outcome through direct contacts with foreign government officials and by influencing the U.S. policy position.

An EC ban on imports of hormone-treated meat restricted U.S. beef exports after January 1, 1989. U.S. retaliation and EC counter-retaliation quickly threatened to escalate the controversy into a major trade conflict. The U.S. position was that hormones used in its products were safe and that the EC action therefore violated GATT rules against using health-related regulations to restrict imports. The Texas cattle industry was particularly hard hit by the EC restriction, prompting state authorities to offer to certify that its meat exports were not from hormone-treated animals. This offer undercut U.S. arguments that the EC measure was primarily an unfair trade practice motivated by protectionist agricultural policies, since it gave the EC a way to demonstrate it would accept meat imports that met its specified health-related requirements. The U.S. government had maintained that certification tests, such as those Texas' officials were willing to conduct, were both unnecessary and unreliable.

Despite protests against Texas "meddling" in foreign policy, state officials persisted in their efforts, claiming that "if Washington won't play a stronger hand—a winning hand for cattle producers—then we in Texas will." The Texas Agricultural Commissioner asserted that "we're not making foreign policy. We're making a trade deal." He felt free to advance Texas interests unless there was evidence that such actions violated a specific law or treaty. "Absent that, it's a states' rights position that a state can do anything that it is not prohibited by the federal government from doing."<sup>19</sup>

An interim agreement in May 1989 sought to diffuse the trade conflict as pressures mounted in Congress for additional sanctions against the European Community. Drawing on the Texas proposal, a four-step certification procedure was established that included EC inspectors visiting in-state feedlots and processing plants. By August, Texas announced its first sale of certified beef to Europe. This policy dispute, which had significant implications for overall U.S.-EC relations, was thus strongly influenced by the actions of state government officials whose proposed solution allowed continued trade in these products while avoiding further retaliatory sanctions.

Texas regulators also figure prominently in another foreign policy arena linked to the activities of the Organization of Petroleum Exporting

Countries (OPEC). For nearly 40 years prior to the formation of OPEC, the Texas Railroad Commission had played a key role in setting world oil prices through its power to limit oil production in the state. The continuing importance of the oil industry in Texas led one of the state's commissioners to begin attending OPEC meetings where he met individually with various oil ministers. Invited as an observer, he sought to obtain information on developments that would affect the Texas economy and to offer suggestions regarding policies on world market price stability.<sup>20</sup>

The U.S. government is not represented at OPEC meetings and does not approve of efforts that aid OPEC price manipulations or that seek to organize non-OPEC producers. Nevertheless, acting as a private citizen, the Texas commissioner was free to meet with OPEC ministers and conduct other related activities. In one case, he organized a meeting in Texas of non-OPEC producers to discuss possible cooperation with OPEC on price stability issues. Officials from eight states and several foreign countries attended the session. At least four states (Alaska, Oklahoma, Arkansas, and Louisiana) subsequently sent their own observers to an OPEC meeting.

While these two cases involved state officials in direct contacts with foreign governments, another type of state activity aims to influence foreign government policy and actions through the state's power to affect international business decisions. This type of state influence can alter overseas corporate operations as well as bring additional pressure to bear on U.S. foreign policy when it runs counter to state-supported positions. One example of this type of action, discussed earlier, involved the Arab boycott debate in the mid-1970s. State antiboycott policy activities ended with the passage of an overriding national statute, but another case with a parallel foreign policy impact continued into the 1980s.

Over one-half the states have acted unilaterally to discourage U.S. corporations from doing business in South Africa. These states, and three times as many localities, established programs requiring that funds held by entities such as public pension systems be divested from stock in companies with investments in South Africa if those firms did not meet a set of anti-apartheid business standards. Some subnational governments even ban purchases from companies that maintain any South African business ties. These actions were influential in leading many companies to sell their operations in South Africa during the mid-1980s.<sup>21</sup> While adding to the isolation of the South African economy, state policies also helped convince national policymakers to forge stronger U.S. sanctions

and to endorse business practice standards roughly in line with the principles initially supported by the activist states.

The assessment of the impact of state actions on U.S. policy toward South Africa has been controversial. One State Department legal officer, speaking in a private capacity, wrote:

Even though state and local divestment may have been ineffectual in bringing about an end to apartheid, it has marked a significant institutional development in the making of our foreign policy. Instead of undermining the regime in Pretoria, divestment has undermined our own government, namely its capacity to establish a coherent and unified policy towards South Africa. . . . Diluted in the face of conflicting measures at the non-federal levels, this [federal] policy has not been allowed to succeed. State and local officials have made themselves back-seat drivers, would-be secretaries of state, on the South Africa issue.<sup>22</sup>

Proposals to preempt state actions related to South Africa were not adopted in the Congress, even when it enacted strengthened U.S. policy sanctions in the Comprehensive Anti-Apartheid Act of 1986. A dozen states and twice as many localities have also begun adopting sanctions with regard to companies doing business in Northern Ireland, tying their measures to the MacBride Principles, which seek to address alleged employment discrimination against Catholic workers. These state actions are opposed by the U.S. State Department, and the British government has reportedly threatened legal actions against any companies that publicly endorse the MacBride Principles.<sup>23</sup>

Other instances of state involvement in foreign policy include a series of specifically targeted protests directed against the former Soviet Union. Fifteen states pulled Soviet vodka from state liquor store shelves after the downing of a Korean passenger plane in 1983, while the governors of New York and New Jersey moved to deny the Soviet foreign minister's plane the right to land in their states during the United Nations' debate on the incident. Oregon's Health Division sought to bill the Soviet Union for costs associated with their response to the Chernobyl nuclear accident in 1986, and California's governor appealed directly to the Soviet leadership regarding its handling of protests in the Armenian Republic in 1988.

In at least one recent case, state actions opposing implementation of U.S. foreign policy did face a constraint imposed by congressional action and upheld by the courts. Several governors tried to block the use of

National Guard units from their states in Central American training exercises that supported U.S. foreign policy pressures against the Sandinista regime in Nicaragua. Congress responded by passing a law over the objection of the National Governors' Association that barred governors from withholding approval for troop deployment based on the location or purpose of the units' assignments.

The states lost a constitutionality challenge to this restriction, demonstrating the practical limits to state foreign policy actions when the national executive and legislative branches are sufficiently united to place specific restraints on state actions. By contrast, the previously cited cases show the general reluctance of national politicians to impose such overt restrictions on state authorities, particularly when states avoid direct confrontations on security-related issues. Mounting a political challenge to state foreign policy activity is more difficult when state influence is extended through indirect mechanisms based on historical powers involving economic growth, civil rights, public health, or other traditionally domestic-oriented objectives.

The limits of subnational challenges to national foreign policy positions is now being tested more by the actions of metropolitan rather than state government authorities. Mirroring early state actions on South African divestment issues, a growing number of cities have adopted activist foreign policy agendas that combine domestic challenges to the application of U.S. policy with direct overseas involvement in foreign policy matters.

On the domestic front, localities have declared themselves as sanctuaries for foreign refugees vulnerable to deportation by federal officials, passed nuclear-free zone ordinances, opposed expanded home-port basing programs for naval ships, and generally argued against U.S. military spending while lobbying to shift funds to domestic economic adjustment and social welfare programs. The most direct and aggressive municipal challenge to national authority met a setback in April 1990 when a federal district judge ruled against most parts of Oakland's nuclear-free zone ordinance. The decision found the ordinance so comprehensive that it was deemed invalid on its face, conflicting with the national government's constitutional rights. As with the governors' challenge to National Guard training maneuvers, this case centers on explicit military defense matters rather than the broader array of issues that constitute other parts of the subnational foreign policy agenda.

The other primary thrust of municipal foreign policy involvement also parallels some state activity, building on foreign trade and investment

missions and expanded sister city arrangements to establish direct relations with foreign governmental authorities. While most of these linkages are founded on economic, social, and cultural ties, a substantial foreign policy dimension is also often manifest. For example, programs in Nicaragua, El Salvador, South Africa, the former Soviet Union, China, and the West Bank have led municipal leaders to protest the actions of foreign governments, or U.S. policy, or both.

This discussion cannot examine the full scope of municipal foreign policy actions, but their evolution will be important to the role state governments play in foreign policy matters. Municipal actions are clearly pushing at the boundaries of previous subnational involvement in foreign policy. Smaller jurisdictions are generally more responsive to pressures from organized interest groups, meaning that challenges to status quo policies can often succeed with targeted local or even state governments well before sufficient national consensus develops to alter standing U.S. policy positions.

This observation is not new, since subnational governments have traditionally served as valuable innovators and incubators of policy ideas in many different fields. The central difference now is the extension of this function to the foreign policy arena, where its practice is neither traditional nor a recognized institutional function. The emergence of metropolitan activism on foreign policy issues raises questions not only about its relationship with national government authority, but also about the role of state governments as an intermediary level of public representation and the legal source of metropolitan governmental powers.

### **Projection and Prescription**

The past two decades offer a kaleidoscopic view of state involvement in foreign policy matters, with constantly shifting patterns emerging as new interests and activities are matched against the growing domestic impact of global interdependence. A summary of broad trends across these diverse activities can help guide the projection of future developments while also identifying the central issues and choices facing America's federal system.

Global forces place new constraints on the ability of government entities to control fully developments within their borders as societal interests and functions increasingly overlap pre-established political boundaries. Federal structures may offer inherent advantages for fashioning a flexible governmental response to changing relationships



among international, national, and subnational interests. Efforts to devise an effective institutional prescription for managing overlapping "intermes-tic" issues in the U.S. federal structure may also be important in light of the worldwide revival of experimentation with federal systems of governance.

A survey of past and current state developments related to U.S. foreign policy reveals an unmistakable trend toward greater state government involvement and influence. The range of state programs affecting foreign policy interests has expanded, particularly with the application of state regulatory processes to the growing number of foreign companies now investing in the United States. These programmatic interests in turn expand the range of foreign policy issues on which state officials engage in direct lobbying activities within the established U.S. policymaking process. The states' international activities also lead to a greater number of direct contacts with foreign government officials, adding a public officeholder dimension to the multiplying channels of private sector communications. Finally, a practice of using traditional domestic authority as a tool to reshape U.S. foreign policy positions at home while also affecting the success of its implementation overseas is emerging among the states.

Tracing these expanding state activities from their historical origins, it is clear that their causal impetus was the growing impact of international economic forces on the domestic economy. The content of international affairs shifted as military-security concerns became more closely tied to underlying economic variables and a range of socio-economic factors invaded the "high politics" of foreign policy. This development resulted in an overlapping of international and domestic policy issues in the United States where traditional state authorities regarding the latter suddenly became relevant on the former as well.

These trends are likely to continue into the foreseeable future, increasing the importance of addressing federal relationship issues as they apply to the conduct of foreign policy. National borders are no longer an effective barrier to the impact of external influences on daily life in subnational jurisdictions. Environmental issues such as acid rain or global warming demonstrate that the economic and social welfare of individuals in any political jurisdiction are inextricably linked to the actions and interests of individuals living in numerous other polities. The impact of round-the-clock transactions on globally organized stock exchanges and the effect of foreign political conflicts on the local price or availability of basic commodity goods mandate that subnational

politicians take an increasingly active interest and involvement in foreign affairs.

The difficulty of adapting to this change within the federal structure is that the legal and institutional guidelines developed over the years to manage areas of overlapping governmental authority on domestic policy issues do not apply as well in the more ambiguous area of foreign policy. Whereas legal and political precedents require national government supremacy in a clear statutory conflict between national and state or local positions on foreign policy matters, foreign policy is seldom defined in statutory language and perhaps necessarily shifts more frequently and unpredictably in response to international events. The eroding distinction between "high" and "low" politics complicates matters still further, increasing the range of issues that rank high on the nation's foreign policy agenda. The significance of this latter change can be seen in the pattern of national challenges to state foreign policy actions. A political and legal consensus is more likely to support clear national preemption on traditional "high politics" security matters than on socio-economic concerns that dominate the growing list of "intermestic" foreign policy issues.

To illustrate with specific examples from this discussion, it is stated U.S. government policy to seek the restriction or elimination of governmental incentives that distort international flows of investment capital, but many states compete vigorously with individually tailored incentive packages to sway the locational decisions of prized foreign investment prospects. The U.S. State Department opposes pressure on American corporations in Northern Ireland to adopt the MacBride Principles, but over a dozen states threaten these firms with economic sanctions if they do not comply with these principles. Absent a specific legislative or regulatory formulation, do these statements of U.S. foreign policy positions constitute official national policy that should override or inhibit state government activity?

Some of these issues, particularly in the area of economic regulation, will be addressed as the need for increased international cooperation leads to the adoption of multilateral agreements that specify national compliance with accepted obligations. A number of these issues are now under discussion in the GATT where binding application to subnational jurisdictions is still a matter for negotiation and ultimately, for the United States, congressional approval as well. If the U.S. government refuses to accept binding coverage on its subnational entities, then the federal structure will leave the states latitude to pursue their own programs, allowing them to

choose whether or not to participate in multilateral agreements according to the same type of independent self-interested calculation that informs national government decision makers.

Certainly many foreign policy matters will be left ambiguous. On these issues, public officials must move to improve and institutionalize communication and cooperation channels that can exploit the many benefits of a decentralized federal system while minimizing the inevitable frictions that arise from constantly changing interdependent relationships. This approach requires recognizing up front the legitimacy and even desirability of state involvement in many contemporary foreign policy matters. Only upon such a mutually agreed foundation can institutional arrangements be built that will successfully exploit the advantages of a federalist system.

In July 1990 the U.S. Advisory Commission on Intergovernmental Relations (ACIR) completed an examination of the growing role of state and local governments in international affairs, adopting a set of recommendations to improve federal system relationships in this area. Commenting on the recent growth of subnational government activity in international affairs, the commission found that "State and local governments have responsibilities concurrent with the federal government for the economic well-being of their citizens and the prosperity of their own jurisdictions and have been left relatively free to engage the global arena on matters relevant to their responsibilities."<sup>24</sup>

Commenting more specifically on initiatives such as lobbying on foreign affairs issues, providing technical assistance to foreign jurisdictions, or adopting divestment policies for companies doing business in South Africa, the commission likewise found a rather broad latitude for subnational government actions to date. "When such state and local activities appear to violate the constitutional prerogatives of the federal government, they are adjudicated in court. Otherwise, whether wise or unwise, they stand as expressions of the pluralism of American federalism."<sup>25</sup>

Following its findings, the ACIR set forth a series of recommendations that would begin to strengthen the cooperative mechanisms at work in the federal structure by relating them more specifically to international affairs issues. The commission called for more participation by state officials in U.S. delegations to international organizations. While the commission also urged greater opportunities for state contributions to the treaty-making process on issues affecting subnational responsibilities, it stopped short of specifying exactly how those contributions should be

made. National government training and personnel exchange programs were targeted to provide better training for foreign policy personnel on the international activities and needs of state and local governments. These programs were urged to open their doors to the training of subnational government personnel as well. Among other relevant commission recommendations are support for enhanced federal cooperation on trade and competitiveness programs and a call for the examination of state-local relationships on international activities.

This ACIR report marked the first time that the organization had systematically examined and explicitly taken a position on the increased international activities of state governments. Their findings and recommendations constitute an intergovernmental recognition of the growing range of these actions and the beginning of an attempt to develop institutional support mechanisms that can enhance federalist strengths while minimizing potential conflicts. State influence on foreign policy related to political-military issues was the least thoroughly examined part of the study. Yet, recognizing the increasing socio-economic content of U.S. foreign policy concerns, it seems probable that intergovernmental relationships on these issues will set the dominant tone for federal relationships on "intermestic" issues over the coming decade.

Looking even further ahead, federalism and foreign policy is a theme that is now emerging in many parts of the world as more national and even regional systems evolve toward a federalist type of model.<sup>26</sup> Developments in the former Soviet Union and several East European nations are moving rapidly toward a decentralization of national power along roughly federalist lines. The European Community is shaping an economic and perhaps eventually a regional political system in which the relationship of member nations may resemble more the subnational units of a federal governmental structure than the nation-state model that grew out of historical European experience.

These developments are responding in part to the same internationalizing forces that are reshaping American society and its institutions. Subnational government units in many nations may seek more direct exchanges of relevant experience and expertise among themselves, essentially bypassing traditional national channels for organizing and controlling international relations. We are literally faced with a possible global proliferation of internationally active subnational entities that would multiply the number of direct contacts between governmental officials in a complex network of international intergovernmental relationships. This may be the broader issue for federalism and foreign

policy at the opening of the 21st century—a set of challenges whose response will be determined in part by the near-term evolution of the American federal system as it incorporates the expanding role of state governments on foreign policy issues.

## NOTES

<sup>1</sup>For greater historical detail, see John M. Kline, *State Government Influence in U.S. International Economic Policy* (Lexington, Mass.: D.C. Heath, 1983), 16-19.

<sup>2</sup>This reference is to the landmark work of Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (Boston: Little, Brown, 1977).

<sup>3</sup>Bayless Manning, "The Congress, the Executive and Intermestic Affairs," *Foreign Affairs* 55 (January 1977): 306-24.

<sup>4</sup>Jay W. Gildner, "Activities of American States Abroad: Purposes, Operations and Policy Questions," case study for the Senior Seminar in Foreign Policy, Department of State, 18th session, 1975-76.

<sup>5</sup>Michael H. Shuman, "Dateline Main Street: Local Foreign Policies," *Foreign Policy* 65 (Winter 1986-87): 168.

<sup>6</sup>Several court cases challenging the unitary taxation system are still in litigation, but thus far rulings have upheld this method's use, absent further congressional action.

<sup>7</sup>See Kline, *State Government Influence*, 187-94.

<sup>8</sup>Thomas J. Price, "State Development Agencies as International Actors and the Decentralization of United States Foreign Economic Policy," *Publius* 11 (Winter 1981): 47-48.

<sup>9</sup>Quoted in Jonathan Rauch, "Stateside Strategizing," *National Journal*, May 27, 1989, 1295.

<sup>10</sup>See various guides published by the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation; Technology Administration; U.S. Department of Commerce.

<sup>11</sup>Daniel Yankelovich and Richard Smoke, "America's 'New Thinking,'" *Foreign Affairs* 67 (Fall 1988): 13; Richard Morin, "Americans Rate Japan No. 1 Economic Power," *The Washington Post*, February 21, 1989.

<sup>12</sup>"States' Support for GATT Procurement Talks Strengthens USTR Position," *Inside U.S. Trade*, August 24, 1990, 17-18.

<sup>13</sup>National Governors' Association policy statement, H-9. GATT Negotiations/H-9.2 Trade in Services; approved by the Committee on International Trade and Foreign Relations, February 3, 1991.

<sup>14</sup>Carol Conway, "The Coming of Age of the IGPAC," in *State International Policies*, a newsletter of the Southern International Policy Network, vol. 1, no. 3, March 1991, 5.

<sup>15</sup>"Foreign Investors Concerned Over Investment Bills in Nine States," *Inside U.S. Trade*, June 16, 1989, 10.

<sup>16</sup>"Aide Memoire," from the Delegation of the Commission of the European Communities to the U.S. Department of State, Washington, D.C., August 7, 1990.

<sup>17</sup>Letter from Linda Fisher, Assistant Administrator for Pesticides and Toxic Substances, U.S. Environmental Protection Agency to the National Resource Defense Council, Washington, D.C., July 26, 1990.

<sup>18</sup>"Aide Memoire."

<sup>19</sup>Quoted in "Hightower to Feds: 'Cut the Bureaucratic Crap,'" *Bulletin of Municipal Foreign Policy* 3 (Spring 1989): 52.

<sup>20</sup>See "Texan to Urge Limits in Non-OPEC Output," *The New York Times*, April 25, 1988; "Herrington Raps Texan's Plan to Talk with OPEC," *The Los Angeles Times*, April 23, 1988; and "In Vienna, Texan Declares He'll be Heard," *The Wall Street Journal*, April 27, 1988.

<sup>21</sup>See Kline, *State Government Influence*, 196-99; and Investor Responsibility Research Corporation (IRRC), "Divestment Action Roundup," November 1990.

<sup>22</sup>Peter J. Spiro, "Back-Seat Drivers, Would-Be Secretaries of State," *Bulletin of Municipal Foreign Policy* 3 (Summer 1989): 41.

<sup>23</sup>"More Cities Sign on to MacBride Principles," *Bulletin of Municipal Foreign Policy* 3 (Summer 1989): 33-34.

<sup>24</sup>*State and Local Governments in the International Arena*, U.S. Advisory Commission on Intergovernmental Relations, forthcoming.

<sup>25</sup>*Ibid.*

<sup>26</sup>For some general comparative readings on federal systems and foreign policy, see Ivo D. Duchacek, Daniel Latouche, and Garth Stevenson, *Perforated Sovereignities and International Relations* (Westport, Conn.: Greenwood Press, 1988); "Foreign Policy in Federal States," *International Journal* 41 (Summer 1986); and A. B. Akinyemi, "Federalism and Foreign Policy," in A. B. Akinyemi, P. D. Cole, and Walter Ofonagaro, *Readings in Federalism* (Lagos, Nigeria: Nigerian Institute of International Affairs, 1979).

# *The Impact of Provincial Governments on Canadian Foreign Policy*

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Other contributions to this volume demonstrate the degree to which the changing nature of the international political economy, especially the process of globalization, has been leading provincial, state, and local governments in both Canada and the United States to "go international," as John Kincaid has put it.<sup>1</sup> That is, these governments have demonstrated their willingness to project themselves, and their interests, beyond their borders, reaching out into the global system, and in the process interacting with other governments in North America and beyond. Indeed, a significant measure of this process of globalization is the degree to which American states and Canadian provinces have been moved to institutionalize their external activities. Internally, there has been an increasing trend among these governments (particularly the wealthier ones) to create their own "foreign ministries," or at least centres of bureaucratic expertise in dealing with the world outside local boundaries; and externally, there has been a comparable trend to institutionalize, as numerous governments have found it useful to create distinctive transborder organizations within which to conduct their diplomacy.<sup>2</sup> Likewise, other chapters show the concomitant importance of the external activities of states and provinces for understanding outcomes in the national trade and fiscal policy of both North American countries.

This chapter explores a different, though complementary, question: to what extent have the external activities of Canada's provincial governments had an impact on Canadian foreign policy more broadly defined?

It is true that at one level, this question is deceptively easy to answer, for it is manifestly clear that Canada's provincial governments engage in considerable activity in the international realm. And provincial and even

city governments have demonstrated a keen willingness to press their interests within the international community, for example, the efforts by the Quebec government to gain a representative role in *la Francophonie*, the attempts by a succession of Alberta premiers to boost foreign investment in that province; the attempts by Ontario (and Toronto) to secure the 1996 Olympic Games; the agreements signed between British Columbia and Washington on policing; and the twinning agreements between the city of Vancouver and strategic cities in the Pacific Rim. Indeed, as the chapter by Douglas Brown indicates, there is no better case study of the important role of Canada's provinces than in the area of trade, both multilaterally and bilaterally with the United States. Such activity is hardly new, but the pace of its growth has been steadily on the increase over the last two decades.<sup>3</sup> Indeed, one mark of how intense this activity by Canada's provincial governments has become in the international sphere is that the central government in Ottawa has felt the manifest need for the development of new institutional mechanisms to permit it to coordinate this activity more effectively.<sup>4</sup>

On the other hand, it should be noted that in order to provide an accurate portrait of the impact of provinces on foreign policy, one must engage in some more precise modification of the international activity of these governments. Despite the enthusiasms of those who study the international activity of constituent governments, and despite scholarly assertions about the importance such "new" actors in global politics at a subnational level, it should be remembered that the international activities of Canada's provinces tend to be limited to only some spheres of policy. In other words, while the international activities of the provinces provide excellent examples of "intermestic" politics<sup>5</sup>—the intersection of "domestic" and "international" politics<sup>6</sup>—Canada's provincial governments do not in fact have an impact on the full range of the external relations of the Canadian community.

Indeed, while there are some areas of policy in which the provincial governments play a critical role—the enhancement of trade, investment, and finance is an obvious example—there are also many spheres where the provincial governments play no role at all in shaping policy responses. Numerous crucial areas of global politics are all formulated, decided, and pronounced in Canada's name by the central authorities in Ottawa alone. Whether it be responses to starvation in northeastern Africa; maldevelopment in Latin America; American military interventions in Central America; Japanese-American trade conflicts; human rights violations in China and Tibet; arms control in strategic, theatre or



strategic nuclear weapons; the end of the Cold War on the Central Front in Europe; ethno-nationalist clashes in the southern rim of the Soviet region; destruction of chemical/biological weapons in the Pacific; interest relief for the G-7 or debt relief for the G-77—in all of these issues, Canada's provincial and local governments are not even players, much less players of consequence.

We are thus left with an inconsistent picture—and an equally unsatisfactory conclusion: on the one hand, it can be demonstrated (as the various chapters in this book do) that provincial governments play what can only be characterized as an important role in shaping Canada's external relations; on the other hand, it can be as easily demonstrated that these same governments are of what can only be characterized as limited importance in many areas of policy, as the enumeration above suggests. If we want to clarify the picture, therefore, we will need to identify the conditions under which Canada's constituent governments are likely to assert themselves successfully in the international sphere and the conditions under which they are likely to find themselves of little or no consequence.

It can be argued that the most fruitful explanatory variable is the most obvious: the reason why provincial governments are so inconsequential in so many areas of external policy is that they lack the *jurisdiction* to involve themselves in more than very limited spheres of external activity—primarily trade and economics and cultural affairs. It should be noted that I use the term to convey a meaning that is much broader than merely its obvious objective element: that is, the formal constitutional divisions of authority that award different levels of government competence in specified policy areas. Rather, I would suggest that jurisdiction also has an important subjective element that complements and enriches the objective aspect. Jurisdiction, I suggest, must also include the informal and conventional understandings of all the players in the policy game as to the proper role of the different levels of government in different policy spheres.

Both aspects of jurisdiction, it can be argued, are of equal importance in understanding the involvement (or lack of it) of provincial governments in foreign policy. For, by itself, a formal jurisdictional exclusion from a policy area will be of little importance if there is a widespread expectation that it is right and proper for governments that might be otherwise technically barred to be involved. For example, in 1990 the federal Canadian government might have insisted that, since it alone should speak for all Canadians in the international system, it alone should

present the bid to have the International Olympic Committee award the 1996 Summer Games to Toronto. However, it is clear that such an exclusionary stance, which might have squeaked by on purely technical grounds, would have been seen by too many as illegitimate (if nothing else). In short, even if there had been a legislative bar to the direct involvement of the governments of Toronto and Ontario in this venture, there would have been a widespread expectation that these governments should "naturally" have been involved.

It is this widespread expectation—which manifests itself in what the Feldmans have called "political necessity"<sup>7</sup>—that drives constituent governments to assert themselves on issues that may lie outside their formal constitutional or legislative *vires*; and these actors may indeed indulge their desire to speak out, or to act, on such issues. Examples of this phenomenon are fairly common in the experience of Canada's constituent governments: the sporadic pronouncements of the *Parti Québécois* government of René Lévesque on the Palestinian issue in the late 1970s; the numerous declarations of municipal councils across Canada in the early 1980s that their cities were nuclear-free zones; the involvement of the Ontario government in the apartheid issue in the mid-1980s;<sup>8</sup> the involvement of the city of Vancouver in a development assistance programme;<sup>9</sup> the participation of various provincial and municipal politicians in anti-Beijing protests following the Tiananmen massacre in 1989; the call by the premier of Alberta for international recognition of Ukraine in August 1991. But in such policy games as these, there tends to be widespread and informal understanding, particularly among the governors themselves (even if not among the governed), that the provincial (and city) governments are, at most, background accompaniment for the tune being carried by Canada's central authorities.

This is hardly surprising. It is clear that Canada's central government continues to hold what amounts to a classical view of foreign policy—at least judging by its behaviour. First, the central government seems to adhere to the traditional view of what foreign policy is, seeing it as a generic and discrete policy area, occupying a largely autonomous policy space. It is true that some contemporary analysts see foreign policy merely as any kind of domestic policy "gone foreign." In this view, foreign policy is commonly conceived of as merely the sum of the external projections of a variety of functional policy areas, whether it be trade, fisheries, defence, immigration, taxation, and so on. As James N. Rosenau put it, "Whatever may bear upon the activities of the state abroad is grist for the [foreign policy analyst's] mill."<sup>10</sup> In short, in this

view, the only thing that makes foreign policy foreign is the "foreignness" of its reach: it is merely domestic policy crossing beyond the politico-territorial limits of a particular political community—and out into foreign space. In this view, foreign policy is akin to domestic policy—a description of policy location—but fundamentally unlike functional policy areas, all of which have some generic content to them. Rather, foreign policy is seen simply as an empty bottle into which can be poured any functional policy issue that crosses a political border, from fire fighting to war fighting.

In sharp contrast to this view, the government in Ottawa seems to make sharp distinctions about different types of external policy. On the one hand, as a result of provincial initiatives beginning in the 1960s, and as a result of comparable moves by constituent governments in other federations, the central government in Ottawa clearly accepts that there is a range of policy issue areas that legitimately engage Canada's constituent governments. It is equally accepting of the idea that on these policy issues, there should be coordination and cooperation between levels of government; indeed, Ottawa has moved to formalize and institutionalize coordinative mechanisms. Its general approach to multilateral trade negotiations in the 1970s and 1980s, for example, reflected this understanding, as the federal government moved to incorporate provincial perspectives and provincial representation in Canada's multilateral negotiations.

On the other hand, there seems to be a wide range of policy issues that come close to being defined by the central government in Ottawa as though they constitute a discrete content for foreign policy and indeed fall within the *vires* of the central government alone. Into this exclusive category would fall, for example, all elements of military/security policy; the politics of the changing relations of the great powers; the issues that define the North-South relationship. These are the issues over which the constituent governments do not play any role at all, an inconsequence, it should be noted, that entirely conforms to central government expectations of the proper role of the constituent governments in such matters.

It should be noted that in this view, foreign policy is not simply about abstract grand issues of war and peace known loosely as high policy. Rather, it is about operating in the many layers of what Hocking calls a multilayered international system<sup>11</sup> in order to maximize the full range of concrete interests of the community as a whole. Smith and Smith have aptly captured the multidimensionality of such a definition of foreign policy. Claiming that contemporary international politics features

a "fluctuating agenda of diplomatic, military, economic and social concerns which are difficult to disentangle," they assert that

Perspectives on foreign policy under these conditions must take account of complexity and paradox. . . . Policy content is neither wholly diplomatic and military nor entirely economic and social; it is not thoroughly permeated by "high politics," as claimed by some theorists, but it is not thoroughly permeated by "low politics," as claimed by others. . . . "Foreign policy" appears now to be an umbrella term for attempts by governments to influence or manage events outside the state's borders.<sup>12</sup>

In other words, it would not be inappropriate to think of the purposes of such management as the maximization of "national security"—if we define "national security" in a broadly Buzanian way.<sup>13</sup>

Second, it would appear from its behaviour that the federal government in Ottawa regards such politico-economic national security as just that: the proper focus of Canadian foreign policy is the security of the wider political community as a whole. In an era when it is popular to deny the monolithic assumptions of statism, and assert instead the "multidimensionality," "perforatedness," "multivocality," or simply the "evanescence" of the nation-state,<sup>14</sup> it is useful to remind ourselves that however abstract the concepts of nation and state might be, and however essentially contested such terms may be,<sup>15</sup> the federal state in Canada nonetheless remains quite concrete and quite sovereign (in both its meanings).<sup>16</sup> At last look, there is in Ottawa a group of state officials, both elected and appointed, who work on solidly Hobbesian and Weberian assumptions about the normative good of the singularity of supreme political authority for a territorially defined area. Moreover, these officials have no hesitation about trying to define the security interests of that singular abstraction, Canada, to make decisions on its behalf and to act in the international system in its name. Furthermore, and quite contrary to the assertions of globalites who preach the advent of such fanciful notions as borderless worlds and the moribundity—if not imminent demise—of the nation-state, it would appear that the assumption that there should be one central authority to make foreign policy decisions on Canada's behalf in the international system remains widely shared among Canadians, including, it should be noted, provincial government officials themselves.<sup>17</sup>

Indeed, it can be argued that it is because of this attachment to a more classical conception of foreign policy that the central government in Ottawa continues to retain such dominance over Canadian foreign

policy writ large, and why the constituent governments are consigned to relative lack of significance in those areas where they have no legitimate claim for involvement.

Confirmation of such an attachment can be best seen in the federal government's reactions to the involvement of provincial or local governments in areas where these governments have no clear jurisdiction. The government in Ottawa will have one of three broad reactions, all dependent on the degree to which the constituent government involvement clashes with Ottawa's definition of the national interest.

First, it may tolerate—or indeed actively encourage—provincial or local government involvement in an international issue. This is likeliest to occur when it is clear that the constituent governments will take a policy position that coincides with or complements Ottawa's own policy and preferences. Thus, for example, the federal government did little to discourage the widespread involvement of politicians from Canada's provincial and local governments in the condemnation of the Chinese government after the Tiananmen massacre in June 1989. Speechifying by municipal and provincial politicians in front of large rallies in provincial capitals and other cities across Canada only added weight to the expressions of concern and protest being lodged by the government in Ottawa. Likewise, the involvement of provincial governments in efforts to assist the transition to a market economy in Central and Eastern Europe after 1989 fitted broadly into Ottawa's own policy priorities.

Second, the central government may simply ignore the efforts of constituent governments to intrude into Ottawa's policy space. For example, when Bill Davis, the Ontario premier, called for greater defence spending during the 1979-80 election campaign, or when Don Getty, the premier of Alberta, called for international recognition of Ukrainian independence following the coup in the Soviet Union in August 1991, the reaction from the federal government was silence. Likewise, silence was the fate of the profusion of nuclear-free declarations by numerous provincial and local governments in the early 1980s—though in this case the silence was accompanied by condescension. The reaction to these declarations from Ottawa was indicative of the federal government's apparent calculus that such initiatives fell so far outside the understood boundaries of constituent government policy space that there was little to be gained by expending serious political energy responding to them.

The third reaction that may be forthcoming from Ottawa is varying degrees of opposition. When the extra-Canadian initiatives of constituent governments conflict with central government policies, Ottawa will

oppose the provincial governments and try to close down their efforts, as the Trudeau government did in the case of some provincial attempts to sanction South Africa in the 1970s, or as Ottawa has done in the case of a number of initiatives taken by the government in Quebec City in pursuit of *indépendantisme* in world politics.

However, it is instructive to contrast how the attitudes of both the central authorities and the constituent governments undergo a marked change when it is a matter of policy issues that fall more clearly within their constitutional or legislative jurisdiction. For example, if one examines the involvement of provincial governments in trade and economic affairs, which do fall within provincial *vires*, it will be clear that the central government has the same range of responses—tolerance, encouragement, condescension, or opposition—to the external initiatives of the provincial governments. Moreover, the same variable—complementarity or conflict with the federal definitions of what constitutes Canadian interests—will explain the federal response. But when constituent governments have a legitimate claim for involvement, the attitudes of all concerned will differ dramatically, with the intensity of federal-provincial conflict escalating in a manner not normally present in other spheres of foreign policy. One example of this is the continuing conflict over provincial representation in Washington, and the insistence of the government in Ottawa that in the American capital, Canada will speak with one Hobbesian voice.<sup>18</sup> The free trade negotiations with the United States, which cut close to core provincial interests in economic development, provide another example of how federal-provincial (and indeed interprovincial) conflict will become markedly more intense when there is conflict over core issues that clearly fall into legitimate areas of competence.<sup>19</sup> And finally, the politics of the Quebec-Paris-Ottawa triangle show how the contending (and frequently incompatible) conceptions of political community held by Canadians of all sorts can generate deep controversy between levels of government.<sup>20</sup>

## CONCLUSION

The purpose of this brief chapter has been to put the discussion of the role of Canadian provinces in the international political economy into broader perspective by inquiring into the impact that constituent governments have had on Canadian foreign policy more broadly defined. I have argued that unless we carefully modify our assertions about the activities and influence of Canada's constituent governments on Canadian foreign

policy, we will end up with an inconsistent—and ultimately inaccurate—portrait. Rather, I have argued that we want to explain not only those areas where provincial governments are both active and influential, but also those areas of policy where constituent governments are simply not players, much less players with influence.

This chapter has tried to offer a way to explain apparent inconsistencies in the levels of activity and influence of provincial governments in foreign policy. It suggests in the first instance that we re-examine the issue of jurisdiction and the claims that constituent governments make for legitimate involvement in external policy areas, as a guide to understanding when and why provincial and municipal governments may involve themselves in international activities. Second, it suggests that more traditional understandings of what foreign policy is provide a useful means to distinguish among the different spheres of international activity engaged in by central governments and constituent governments. By doing so, we rediscover the importance of the central state as an actor in international politics, and of a broadened conception of national security as the proper focus of foreign policy. By doing so, we also enrich our understanding of the numerous areas of international affairs where provincial governments are both active and influential.

## NOTES

<sup>1</sup>John Kincaid, "State and Local Governments Go International," *Intergovernmental Perspective* 16 (Spring 1990): 6.

<sup>2</sup>Students of global politics have been hesitant to describe the external activities of constituent governments as diplomacy without the quotation marks. In part this is because the term "diplomacy" carries with it all the baggage of the classical concerns of a state-centric international politics, which is clearly inappropriate in the circumstances. Other terms in use are "microdiplomacy," "paradiplomacy," and, for those constituent governments that on occasion may aspire to full sovereignty within the states-system, "protodiplomacy." See also Hans J. Michelmann and Panayotis Soldatos, eds., *Federalism and International Relations: The Role of Subnational Units* (Oxford: Clarendon Press, 1990).

<sup>3</sup>It is instructive to compare the perspectives in the literature over the last 20 years: for example, Ronald G. Atkey, "The Role of the Provinces in International Affairs," *International Journal* 26 (Winter 1970-71): 249-73; Howard A. Leeson and Wilfried Vanderelst, eds., *External Affairs and Canadian Federalism: The History of a Dilemma* (Toronto: Holt, Rhinehart and Winston, 1973); the contributions on the Canadian provinces to *Choix* 14 (1982); Elliot J. Feldman and Lily Gardner Feldman, "The Impact of Federalism on the Organization of Canadian Foreign Policy," *Publius: The Journal of Federalism* 14 (1984); Hans

J. Michelmann, "Federalism and International Relations in Canada and the Federal Republic of Germany," *International Journal* 41 (Summer 1986): 539-71; the contributions on Canada in Duchacek, Latouche, and Stevenson, eds., *Perforated Sovereignities*; Annemarie Jacomy-Millette, "Les activités internationales des provinces canadiennes," in Paul Painchaud, ed., *De Mackenzie King à Pierre Trudeau: Quarante Ans de Diplomatie Canadienne* (Québec: Les Presses de l'Université Laval, 1989), 81-104; and the Canadian selections in Michelmann and Soldatos, eds., *Federalism and International Relations*.

<sup>4</sup>For a discussion, see Feldman and Feldman, "Impact of Federalism"; Jacomy-Millette, "Les activités internationales des provinces."

<sup>5</sup>This term is usually attributed to Bayless Manning, "The Congress, the Executive and Intermestic Affairs," *Foreign Affairs* 55 (January 1977).

<sup>6</sup>See Peter J. Katzenstein, "International Relations and Domestic Structures: Foreign Economic Policies of Advanced Industrial States," *International Organization* 30 (Winter 1976); Peter Gourevitch, "The Second Image Reversed: The International Sources of Domestic Politics," *International Organization* 32 (Autumn 1978); Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42 (Summer 1988).

<sup>7</sup>Feldman and Feldman, "Impact of Federalism," 35.

<sup>8</sup>See, for example, Kim Richard Nossal, "'Micro-diplomacy': The Case of Ontario and Economic Sanctions Against South Africa," in William M. Chandler and Christian W. Zöllner, eds., *Challenges to Federalism: Policy-Making in Canada and the Federal Republic of Germany* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1989), 235-50.

<sup>9</sup>Vancouver was an integral part of a development assistance programme involving Chinese municipal administration. See Patrick J. Smith and Theodore H. Cohen, "Municipal and Provincial Paradiplomacy and Intermestic Relations: British Columbia Cases," paper delivered to the annual meeting of the Canadian Political Science Association, Victoria, B.C., May 1990, 18-19.

<sup>10</sup>Rosenau, "Introduction: New Directions and Recurrent Questions in the Comparative Study of Foreign Policy," in Charles F. Hermann, Charles W. Kegley, Jr., and James N. Rosenau, eds., *New Directions in the Study of Foreign Policy* (Boston: Allen and Unwin, 1987), 2. Such an unbounded definition is consistent with Rosenau's broader view that foreign policy is a "discipline with limitless boundaries," covering "the whole gamut of human experience." *Ibid.*, 1.

<sup>11</sup>Hocking ("Multilayered diplomacy") rightly rejects Rosenau's "two worlds" dichotomy as insufficiently reflective of the intermeshing linkages between the "state-centric" and "multi-centric" spheres.

<sup>12</sup>Steve Smith and Michael Smith, "The Analytical Background: Approaches to the Study of British Foreign Policy," in Michael Smith, Steve Smith, and Brian White, *British Foreign Policy: Tradition, Change and Transformation* (London: Unwin Hyman, 1988), 15.



<sup>13</sup>Buzan's multidimensional understanding of "national security" goes well beyond the classical realist concern with territorial integrity and political independence. Rather, he develops a more holistic notion of what it is for a community—and its members—to "be secure." See Barry Buzan, *People, States, and Fear: The National Security Problem in International Relations* (Brighton: Wheatsheaf Books, 1983).

<sup>14</sup>See Duchacek, Latouche, and Stevenson, eds., *Perforated Sovereignities*; R. B. J. Walker, *One World, Many Worlds: Struggles for a Just World Peace* (Boulder: Lynne Reiner, 1988); Earl H. Fry, Lee H. Radebaugh, and Panayotis Soldatos, eds., *The New International Cities Era: The Global Activities of North American Municipal Governments* (Provo: David M. Kennedy Center for International Studies, Brigham Young University, 1989). On this issue, one cannot but be struck by the popular literature over the last generation that has persistently stressed the notion of a world where states and borders are said to be of declining importance: for example, Richard J. Barnet and Ronald E. Muller, *Global Reach* (New York: Simon and Schuster, 1974); Kenichi Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy* (Toronto: Harper Collins Canada, 1990).

<sup>15</sup>For a sensitive argument on the continuing importance of the state in international relations, see Tom Keating, "The State and International Relations," in David G. Haglund and Michael K. Hawes, *World Politics: Power, Interdependence and Dependence* (Toronto: Harcourt Brace Jovanovich, 1990), 16-37.

<sup>16</sup>That is, the "state" as commonly recognized international entity endowed with the legal attributes of sovereignty within the international community, and the "state" as a set of governing institutions and structures (following Max Weber), endowed (following Jean Bodin or Thomas Hobbes) with sovereignty: supreme political authority for the community within a territorially delimited "domestic" jurisdiction.

<sup>17</sup>For an interesting statement of such assumptions by a senior provincial official, see Wayne Clifford, "A Perspective on the Question with Particular Reference to the Case of the Province of Alberta," *Choix* 14 (1982): 108-09.

<sup>18</sup>For a description of this difference, see Stephen Clarkson, *Canada and the Reagan Challenge*, rev. ed. (Toronto: James Lorimer, 1985), 301-10.

<sup>19</sup>See, for example, Hocking, "Multilayered Diplomacy."

<sup>20</sup>The best history of this triangle during the Trudeau period is to be found in J. L. Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1990), Ch. 5.

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