A SYMPOSIUM

Sponsored by the Center for International Business
Director, David McHenry Reid
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ROCHESTER INSTITUTE OF TECHNOLOGY

NAFTA: The China Factor

After 10 years in operation how has NAFTA worked out? Who has benefited? Which enterprises should benefit? The performance and relevance of NAFTA will be appraised by corporate leaders, experts from universities, government and think tanks drawn from Canada, Mexico and the USA. Speaker sessions will be followed by plenary panels to encourage the exchange of ideas.

R·I·T

Thursday MAY 26 7:30am—4:00pm

Friday MAY 27 7:30am—11:00am

B. Thomas Golisano, Auditorium
College of Computing & Information Science (Parking Lot J)
Rochester Institute of Technology
Rochester, New York

Dr. Albert Simone, President, RIT
Welcome Address

David McHardy Reid, Benjamin Forman Chair of International Business

Silvia Nunez Garcia, CISAN, Universidad Nacional Autonoma de Mexico

Professor Walid Hejazi, University of Toronto, Canada

Klaus Gueldenpfennig, President and CEO, Redcom Inc., Victor, NY

Kevin Kelley, Rochester Tooling & Machinery Association

A. William Wiggenhorn, Vice Chair,GEM

Mark Gavoor, Director of Logistics, Colgate Palmolive, Inc.

Dr. Jose Luis Valdes Ugalde, Director CISAN, Universidad Nacional Autonoma de Mexico

Dr. Monica C. Gambrill, CISAN, Universidad Nacional Autonoma de Mexico

John LaFalce, Ex-US Congressman, D-NY 29th District

Ron Jones, Xerox Professor of Economics, University of Rochester

Gary Hufbauer, Institute of International Economics, Washington, D.C.

Jon Johnson, Partner, Goodmans LLP, Toronto

Registration Fee: $100.00
includes continental breakfasts, lunch and proceedings

Small business (<500 employees) 50% discount

RIT Community and Alumni—fee waived

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Symposium
NAFTA: The China Factor

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CENTER FOR INTERNATIONAL BUSINESS AND ECONOMIC GROWTH

NAFTA: The China Factor

A Symposium sponsored by The Center for International Business, Rochester Institute of Technology
Co-sponsored by the Rochester Business Alliance & The Rochester Business Journal

Agenda: Thursday – May 26

7:30 – 8:00	Continental Breakfast	
8:00 – 8:15	Dr Albert Simone, President RIT	Welcome
	Sandra Parker	RBA Welcome
8:15 – 9:00	Dr David McHardy Reid	*NAFTA & China: an Overview*
9:00 – 9:45	Dr Gary Hufbauer	*Can the Mexican Eagle escape the Chinese Dragon?*
9:45 – 10:00	Break	
10:00 – 11:30	**Panel Session I:** "The US Perspective" *David Reid*, *moderator*: Gary Hufbauer, Klaus Gueldenpfennig, Todd Fox, Kevin Kelley	
11:30 – 12:15	Buffet lunch in the Atrium	
12:15 – 1:00	Dr Jose Luis Valdes Ugalde	*NAFTA: a view from Mexico*
1:00 – 1:45	Dr Ron Jones	*International Technology Transfers: General Remarks*
1:45 – 2:30	Dr. Monica Gambrill	*Analyzing the NAFTA reality*
2:30 – 2:45	Break	
2:45 – 3:15	John LaFalce	*NAFTA: from a negotiation to an appraisal standpoint*
3:15 – 4:30	**Panel Session II**: "The Mexican Perspective" *Reid,* Jose Luis Valdes Ugalde, Mark Gavoor, Monica Gambrill, John LaFalce, A. William Wiggenhorn	

Agenda Friday - May 27th

7:30 – 8:00	Continental Breakfast	
8:00 – 8:45	Dr Walid Hejazi	*Canada's and Mexico's changing FDI positions: What role has NAFTA played?*
8:45 – 9:30	Jon Johnson	
9:30 – 9:45	Break	
9:45 – 10:30	**Panel Session III:** "The Canadian Perspective" *Reid*, Jon Johnson, Walid Hejazi, Canada International Trade Dept., Bernard Wolf	
10:30 – 11:00	Dr David McHardy Reid	Concluding Remarks "Looking for a Solution"

ABSTRACT

NAFTA: THE CHINA FACTOR

NAFTA CASE STUDIES: RULES OF ORIGIN, NAFTA AS AN INVESTMENT TREATY, SOFTWOOD LUMBER

Jon R. Johnson
Goodmans LLP

May 27, 2005

My presentation will address three areas in which I have had personal involvement, namely the NAFTA rules of origin, the NAFTA investment chapter and the softwood lumber dispute. My focus will be on the successes and failures of the NAFTA regime in each area.

RULES OF ORIGIN

Rules of origin comprise the gateway to free trade in any free trade area because the only goods eligible for duty-free treatment are those that satisfy the applicable rules of origin. Rules of origin create distortions by causing businesses to make decisions respecting purchasing inputs that they might not otherwise make in order to comply, and excessively complex rules of origin defeat the entire purpose of a free trade agreement because the expense of complying can outweigh the benefit of duty elimination.

While certainly distorting to varying degrees, the NAFTA rules of origin regime has been successful in virtually eliminating the disputes that plagued the rules of origin regime under the Canada-U.S. Free trade Agreement. The NAFTA negotiators resolved the disputatious issues by negotiating not only the rules that are set out in the NAFTA text but also the precise wording of each country's implementing regulations.

The weakness in the NAFTA regime is its inflexibility. Some rules, particularly those relating to automotive goods, are too complicated and too expensive to apply. While there is some latitude to make adjustments to the rules, major changes would require an amendment to the NAFTA treaty. While a rules of origin amendment would probably be non-contentious, reopening the NAFTA treaty with any amendment entails risks with the U.S. Congress that no NAFTA Party wishes to take.

INVESTMENT CHAPTER

The NAFTA investment chapter has been a decidedly mixed blessing. On the positive side, the NAFTA investment chapter may have restrained NAFTA Governments (federal, state and provincial) from unwise courses of actions and has provided modest compensation to investors in a few instances. On the negative side, difficulties in interpreting the provisions of the NAFTA investment chapter have created uncertainties for both governments and investors.

The difficulties with NAFTA Chapter Eleven are rooted in its origins in the U.S. Model Bilateral Investment Treaty, which was designed for use by the United States with developing countries assumed to have poorly developed legal systems. A bilateral investment treaty between a developed country such as the U.S. and developing country is essentially unilateral because of the absence of developing country investors. The NAFTA investment chapter inserts this regime between two highly developed countries, the U.S. and Canada, both with highly developed but

frequently differing legal regimes. The investment chapter has the effect of replacing domestic law with international law, which is frequently amorphous and ill developed.

Vague international standards inhibit policy makers wishing to pursue legitimate public policies but not wanting to run the risk of triggering potential investment claims. Investors are also ill served by vague standards because NAFTA claims are very expensive to litigate and investors will be restrained from pursuing claims if the standard upon which the claim is based is so ill-defined so as not to give any assurance as to the end result.

THE SOFTWOOD LUMBER DISPUTE

The softwood lumber dispute is the longest running and most intractable trade dispute that has ever existed between Canada and the United States or perhaps between any two countries. The root of the dispute is that timberlands in the United States are mostly privately owned while timberlands in Canada, other than in the four Atlantic Provinces, are mostly owned by provincial governments. U.S. lumber producers allege that provincial governments confer a subsidy by not charging Canadian producers sufficiently high rates (stumpage fees) for the right to cut trees on government-owned land. The nature of timber is such (different species, different harvesting conditions, different sizes and tapers of trees, etc) that it is very difficult to meaningfully assess what stumpage fees would prevail if timberlands were privately owned.

NAFTA does not purport to resolve questions as to what constitutes a subsidy and what subsidies should be countervailable. These issues are addressed in the WTO Agreement. However, NAFTA establishes, as an alternative to judicial review under a NAFTA Party's domestic law, a binational review process for reviewing key determinations in antidumping and countervailing duty cases. The binational panel process was, for Canada, a *sine qua non* for entering the original Canada-U.S. Free Trade Agreement and is an essential pillar of NAFTA. The NAFTA binational panel review process has been used frequently by interested persons in all three NAFTA countries and has generally functioned well with timely well-reasoned decisions.

The difficulty with the softwood lumber dispute is not with the NAFTA process itself, but with the fact that the stakes are so high on the U.S. side and the interested lobby group so influential that the U.S. government has been driven to take positions that, unless reversed, will destroy the effectiveness of the NAFTA binational panel review process. The high stakes in the current iteration of the softwood lumber dispute are in large measure attributable to the WTO-inconsistent U.S. Byrd Amendment, under which antidumping and countervailing duties are paid over to petitioners. The U.S. government position of principal concern is that the effect of NAFTA binational panel decisions under U.S. law is prospective and that deposits collected during the course of the litigation before the panel, which can last two years or more, need not be refunded if the antidumping or countervailing duty orders are overturned by the panel. That Canada finds itself in this circumstance underscores the weakness of international trade agreements, under which the only recourse against determined non-compliance is withdrawal of benefits which, aside from being potentially self-defeating, serves to undermine the objectives that the agreement was designed to achieve.