

STUDY COORDINATION OFFICE
Update identification record

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ORIGINAL STUDY

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Author: Secretariat of the Commission on the Political and Constitutional Future of Québec

Title: *L'accès du Québec aux marchés extérieurs et à l'espace économique canadien* (access by Québec to external markets and to Canada's economic space)

UPDATE

Author: Maurice Arbour

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Comments: The author of the update was chosen through a call for proposals and on the recommendation of the evaluation committee. He was asked to consider the questions dealt with in the Ivan Bernier study (Vol. 1, pp. 1-17).

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Updated study entitled
L'accès du Québec aux marchés extérieurs et à l'espace économique canadien
(access by Québec to external markets and to Canada's economic space)

Summary

Among the main questions studied by the Commission on the Political and Constitutional Future of Québec (the Bélanger-Campeau Commission, 1991), that of possible access by a sovereign Québec to external markets and to Canadian economic space is of central importance. The purpose of the present study is to gauge the extent to which the international trading agreements now underpinning the international trade of Québec as a member of the Canadian federation could be affected or jeopardized solely by Québec's accession to sovereignty. The North American Free Trade Agreement (NAFTA) naturally comes to mind, as do the many World Trade Organization (WTO) accords. The question is of signal importance, as the continuity or rupture of the strictly legal bonds that now unite Québec and the rest of the world in terms of Québec's exports of goods and services, and ensure both the stability and development of its economy, depend on it.

Much substantive thought was devoted to this whole question in 1991. Ten years later, a reassessment has proven particularly necessary, given that the WTO succeeded the GATT on January 1, 1995, NAFTA succeeded the FTA on January 1, 1994 and we are now contemplating the establishment by 2005 of a free trade zone of the Americas, in which NAFTA's standards would encompass all of the Americas. Note as well that the Convention on Succession of States in Respect of Treaties came into force on November 6, 1996, 31 states have gained their independence and have become members of the United Nations since 1991, and the practices of states over the last decade can provide extremely valuable food for thought.

The conclusions of the Secretariat of the Bélanger-Campeau Commission on the specific question of the succession of states to treaties were as follows: While a newly independent Québec would automatically become a member of the GATT through a simple notification procedure, it would have to negotiate its adherence to the Canada-US Free Trade Agreement. Owing to changes in the legal premises over the last ten years, those conclusions must be reassessed in order to confirm them, reinforce them or invalidate them in whole or in part.

This study concludes that Québec would have to seek admission to the WTO, in contrast to the situation prevailing under the GATT, and that it would apply through a negotiation process, the length of which would depend on the degree of conformity of the applicant's commercial system with WTO law, and on the expectations of Québec's main trading partners.

In regard to NAFTA, it is difficult to provide a clear-cut opinion, so fragmentary and evolving are the legal premises. According to all evidence, extremist positions must be abandoned. First, the position that NAFTA would automatically apply to Québec *ipso jure* with no negotiations whatsoever, as of independence, must be rejected out of hand. Although the Convention on Succession of States in Respect of Treaties (the Vienna Convention of 1978) does establish the principle of succession, bear in mind in particular that it does not bind the three states involved (Canada, the United States and Mexico), since they have not ratified the Convention. We must

therefore rely on the traditional practices of states in this regard, that is, international customary law, which actually confirms the principle of rupture or non-succession. We must also reject any opinion that succession is inadmissible, as the spirit of the Vienna Convention of 1978 and the recent practices of states in the break-up of the USSR, Czechoslovakia and Yugoslavia demonstrate that the stability and security of international relations are better safeguarded through the principle of continuity and succession than through the principle of rupture. Authors have mentioned in this regard the presumption of continuity of treaties in the event of secession, and this has to be Québec's stance if it is to retain its membership in NAFTA. Need it be pointed out that, ultimately, the principle of rupture is imposed failing agreement between the states involved. In the era of the FTA, it is illogical to think there would be a common policy among NAFTA's current members to expel Québec from the NAFTA zone.

In its 1991 study, the Secretariat of the Bélanger-Campeau Commission considered the possibility that the Canada-US Free Trade Agreement would apply to Québec through succession after an agreement with Canada and the United States on the changes to be made to the accord. That scenario seems even more likely in the framework of NAFTA than that of a complete rupture, and adjustments rather than comprehensive renegotiations should be contemplated. It is nonetheless true that the consent of the three other partners does in fact seem to be a *sine qua non*, and it is possible, and even highly probable, that in the end Québec will have to negotiate its admission through a process in which each NAFTA member state can ultimately choose whether to consider a sovereign Québec to be a non-party state. The fundamental question that the Québec government must resolve is what, in theory, such a negotiation process may involve in terms of additional concessions, if concessions need indeed be made.

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