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How trade deals hurt policy

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Those looking for evidence that governments wield less power in an era of globalization might want to cast their eyes eastward.

Earlier this month, New Brunswick said it was rejecting the key recommendation of a special commission that had called for the adoption of a public automobile insurance scheme.

Premier Bernard Lord nearly lost the 2003 provincial election thanks to a public outcry over onerous auto insurance premiums, and he promptly set up a commission to examine the case for a public system such as those in Manitoba and British Columbia. But when the commission recommended a public scheme, Mr. Lord rejected it, ostensibly because he questioned the projected savings.

The real spur for Mr. Lord's rejection, however, may have been the claims by industry that a publicly administered scheme could violate Canada's international trade commitments -- an increasingly powerful argument in an era where governments operate under a constellation of such rules.

The Lord government took outside legal advice on the trade implications of a switch to a public scheme. A source familiar with that advice told me that a public insurance program might be deemed an "expropriation" of the market share of existing (foreign-owned) private firms operating in the N.B. market. Much the same warning was offered to the Council of Atlantic Premiers last autumn by the law firm McCarthy Tétrault.

While international trade agreements such as NAFTA would not bar governments from adopting a new public auto insurance program, governments would need to compensate affected players. And depending on how much foreign equity was sunk into the existing insurance market, New Brunswick might have had to pay handsomely for that right.

Auto insurance is not the only policy area where governments are finding that international trade agreements have narrowed their policy options.

Lawyers hired by the Romanow commission warned in 2002 that the same obstacles plague health care. Efforts to expand medicare into new realms -- such as dental care -- would likely run afoul of international rules that protect the market share of foreign businesses (including dental clinics) operating in Canada.

Trade lawyer Jon R. Johnson, in a paper that should be required reading for every MP, tutored the Romanow commission on the new global realities that condition domestic policy-making. While not necessarily barring the expansion of medicare, Mr. Johnson cautioned that NAFTA could make it very expensive to do so. Indeed, had such trade deals been in place in the 1960s when medicare was being contemplated, "the public health system in its present form would never have come into existence."

There may have been a time when governments could, and did, experiment with private and public delivery of various social goods -- without needing to worry that they would trip a wire triggering a windfall payment to foreign businesses. That time is long past. And business recognizes this, even if our elected officials sometimes require high-priced legal advice to grasp it.

In recent years, too many of our elected officials have practised "lazy faire" economics: a casual indifference to the practical policy implications of our growing number of international trade agreements.

But the implications of those agreements are too clear to ignore: Once a sector is opened to the private sector, the new rules of the international trade game can require that governments pay off market players (at least the foreign-owned ones) before they can pursue public solutions to policy problems.

Not only does this pose formidable obstacles to the creation of new public programs -- be they publicly administered auto insurance or publicly funded dental care -- it also limits the ability of governments to abandon privatization policies that don't work out as planned.

Elected officials still retain the sovereignty to regulate in the public interest. But thanks to a bevy of new international agreements, they could find themselves paying a hefty user fee to exercise that democratic prerogative.

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