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Trade and Border Security as Political Issues in Canada

by Howard Cody



Here, we present the second of two articles on Canadian-American free trade that were generated by a February 5, 2003 forum co-sponsored by the Maine International Trade Center and University of Maine Canadian American Center. Howard Cody begins where his University of Maine colleague, Scott See, leaves off—with passage of the Free Trade Agreement—and brings readers up to the present day, where trade and border security concerns have become inextricably combined. Cody argues that Canadians will not persuade Americans to distinguish between the two concerns and, consequently, that Canadians will eventually accept some sacrifice in national sovereignty in order to maintain the benefits of their current trade and investment relationship with the United States. 🐉

TRADE AND BORDER POLITICS BEFORE MULRONEY

Before the 1980s, Canada's political leaders routinely professed support for "enhanced" or "freer" trade between Canada and the United States. After all, Canada had benefited greatly from the 1854-1866 Reciprocity agreement the British negotiated with the United States for their North American colonies. It was during this brief interval that Canada prospered from the recently built Montreal to Portland railway that gave Montreal year-round access to the Atlantic. After the Americans abrogated Reciprocity to punish the British for selling the Confederacy a navy, Canadians tried to persuade the United States to negotiate a new trade deal. On the one occasion when they succeeded, in 1911, Canadian voters unexpectedly turned out of office the government that had negotiated the new Reciprocity agreement from fear of an American takeover.

Still, in the early 1920s geography trumped Imperial Preference when the United States replaced Britain as Canada's largest trade partner and its leading source of foreign investment. Canada-U.S. tariffs finally started to fall after 1935, when Liberal Prime Minister Mackenzie King and Democratic President Franklin Roosevelt instituted a most-favored-nation tariff reduction program to counter the Great Depression. During the lengthy period that followed the War of 1812's border incursions, complacency about the "world's longest undefended border" generally kept border security off both countries' agendas. The major exception occurred in the 1920s. Canada gave American agents little help when they attempted to stop the importation of Canadian whisky and beer during Prohibition.

By 1980 the United States accounted for some 70% of Canada's exports and imports. With this dependence, Canadians resented congressional protectionism that hindered access to the American market for major exports such as softwood lumber. Liberal Prime Minister Pierre Trudeau's Third Option campaign of the 1970s sought out alternative Western Hemisphere, European, or Asian trading partners or blocs to bolster Canada's multilateral relationships and reduce its disadvantageous bilateral trade, investment, and cultural

reliance on the United States. Nothing was available. For example, the European Community rebuffed Trudeau's initiative to forge a "contractual link" that would have given Canada almost an associate membership in Europe.

At the same time, historical experience (the events of 1911 haunted politicians for seven decades) and prevailing sensitivities about the need to protect national sovereignty and an identity different from the United States continued to deter elected politicians of all parties from endorsing a comprehensive free trade deal with the United States. Besides, during the twentieth century Canada's dominant Liberal party gained something of a nationalist reputation. Most Liberals argued against closer ties with the United States. The ground began to shift around 1975 when non-elected government bodies like the Economic Council of Canada and Canada's appointed Senate, along with the business-supported C. D. Howe Institute think tank, suggested that Canada approach the United States about negotiating an across-the-board trade pact. The Trudeau government responded cautiously with a proposal for free trade on a limited sectoral basis; that is, it negotiated one sector at a time. If all went well, something more wide-ranging might gradually evolve. Trudeau also appointed one of his senior cabinet ministers, Donald Macdonald, to head a well-publicized Royal Commission on Canada's Economic Prospects. All sides to the issue eagerly awaited Macdonald's report.

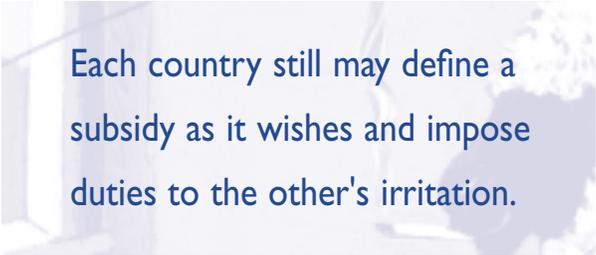
MULRONEY AND REAGAN STRIKE A TRADE DEAL

The 1984 election of Conservative Brian Mulroney during the Ronald Reagan administration in Washington increased the momentum for a comprehen-



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sive trade deal. Mulroney, a former president of American-owned Iron Ore Company of Canada, had close ties to the business elites of both countries. Like Mulroney, most business leaders believed that the removal of tariff protection would make Canada more competitive by forcing governments to exercise greater fiscal discipline through tax and spending restraint, and by imposing a “leaner and meaner” efficiency on Canadian businesses. The business-friendly Reagan administration endorsed the initiative. The Department of Commerce’s United States International Trade Commission determined in 1985 that only two of 35 major industrial sectors in the United States economy might suffer under free trade with Canada. Then came the long-awaited Macdonald Royal Commission Report. The respected Liberal recommended that Canada pursue comprehensive free trade talks with the Americans. Mulroney now enjoyed all the political cover he needed to proceed.



Each country still may define a subsidy as it wishes and impose duties to the other's irritation.

Negotiations for the Canada-U.S. Free Trade Agreement (CUFTA or simply FTA) dragged on for 17 months between May 1986 and October 1987. They concluded one day before the October 4 deadline that Congress had set as part of its approval of fast-track negotiations. Fast track meant that Congress would have to accept or reject the deal as negotiated with no changes. The protracted bargaining testified to free trade’s political sensitivity in Canada. It also reflected Canadian negotiator Simon Reisman’s failure to persuade Americans to grant Canada’s key objective besides securing access to the United States consumer market. Canada wanted ad hoc binational panels to settle disputes with binding rulings that had the authority to override a protection-minded Congress

and avert further countervailing and anti-dumping duties on Canadian exports.

Canadians considered this concession a perfectly reasonable quid pro quo for Americans’ guaranteed access to Canada’s energy resources and to its banking and investment services. But American negotiators used their standard “good cop-bad cop” routine on the Canadians by claiming with regret that they could not persuade members of Congress to accept an arrangement that weakened their ability to protect their constituents’ jobs. Canada had to settle for panels that merely interpret existing laws that Congress retains the authority to change. Unfortunately for Canada, the two countries could not agree on a definition of subsidy for these panels to enforce. They gave themselves 10 years to negotiate a subsidies code. After 16 years, they have yet to agree on one. None is in sight. Each country still may define a subsidy as it wishes and impose duties to the other’s irritation. The United States did this in 2002 with a 27.2% duty (some \$4 million CDN every day) on Canada’s softwood lumber exports, and in 2003 with a 3.94% duty on Canadian durum wheat. Seemingly endless negotiations have not yet settled the softwood dispute. Because panels must review duties in accordance with existing law, Congress may change laws when rulings go against its constituents’ interests. Besides, panels consume a great deal of time. They may offer their own unpredictable interpretations of what does and does not qualify as a subsidy. This is not the dispute settlement device that Canadians tried to negotiate.

CANADA’S TRADE POLITICS FROM THE FTA TO THE NAFTA

At first Canadian public opinion was closely divided on the FTA. In late 1988 Mulroney called an election in which the still non-ratified FTA was the principal issue. He won a second government with well under half of the votes for his Conservatives when anti-FTA Canadians split between the Liberals and New Democrats. This permitted his Conservatives to win many parliamentary districts, especially in Ontario, where prevailing opinion opposed the deal. In his second government, Mulroney enacted the FTA and

moved Canada toward the NAFTA, including Mexico. Canada had never betrayed much interest in a closer relationship with Mexico or Latin America. The Canadian government, wishing to stay out of disputes between the United States and Latin American countries, had declined repeated invitations to join the mostly Latin Organization of American States (OAS). Mulroney finally brought Canada into the OAS. He was left no alternative on trade with Mexico when the Bush administration and Mexican President Carlos Salinas decided that free trade was in their mutual interest. Canada could not allow firms based in the United States but not Canada to enjoy access to Mexico's large market. Canadians feared that Asian and other investors would locate their operations in the United States rather than Canada to secure the benefits of free trade in both directions.

NAFTA was negotiated between summer 1991 and summer 1992. Canadians directed much less attention to the NAFTA talks than those for the FTA, apparently because they expected NAFTA to extend the existing FTA to Mexico. The deal subsequently cleared Congress and Parliament in 1993 without much difficulty. Even so, Canadians were annoyed that Mexico had managed to convince American negotiators that the nationalistic Mexican public could not accept free trade unless their government retained the right to control Mexico's energy resources and investment. Canadians knew they had no chance of gaining a concession of this kind.

In the 1993 election, Mulroney's successor Kim Campbell led the Conservatives to a crushing defeat. Although the Liberals promised in their Red Book platform to reopen the NAFTA to add labor and environmental guarantees, they chose not to make free trade a major issue this time before or after the election. Liberal leader Jean Chretien—who remains Prime Minister to this day—recognized that anti-free trade sentiment had declined since 1988 and had been replaced with grudging support. Besides, by 1993 Canada's economy had accommodated itself to the new regime. Reversion to the situation of just a few years before would have imposed serious new adjustment problems. Chretien accepted the NAFTA without revisions, as did President Clinton, despite their

complaint that it offered too little protection to Mexico's environment and workers.

On January 1, 1994, the FTA's fifth anniversary, its successor took effect. Predictably, Canada's trade dependence on the United States has grown still further. Canada now relies on the United States for 85% of its imports and exports, more than ever before. Cross-border trade exceeds \$1.3 billion U.S. every day. Further, 40% of Canada's income derives from exports to the United States. All exports accounted for some 43% of Canada's Gross Domestic Product (GDP) in 2001, up from 26% just 12 years earlier when the first free trade deal took effect. Canada depends more heavily on export trade for its economic health than any other large industrialized country. By comparison, the comparable 2001 figure for the United States and Japan's exports was only about 10% of GDP.

THE POLITICS OF TRADE UNDER NAFTA, THE WTO, AND THE FUTURE FTAA

By the mid-1990s, Canadian opposition to free trade in mainstream politics was confined to the politically marginal left-wing New Democrats. At the 1999 "Battle of Seattle" at a World Trade Organization (WTO) meeting, New Democrats joined with anti-capitalist globalization protestors. They argued that trade deals primarily advantage transnational corporations by placing profits above national governments' ability to safeguard their citizens' social rights and benefits, and by eroding the political will to do so. Many Canadian nationalists, scandalized by the extent to which Canada relies on its trade relationship with the United States for its standard of living, fear that Canada no longer can afford to assert for itself a role in international politics. They wonder how long Canada can dare to take positions on controversial issues, such as the Kyoto protocol on global warming and an International Criminal Court (ICC), that differ from United States policies. But globalization's critics still enjoy limited support. Recent opinion polls show that Canadians feel optimistic about Canada's prospects and approve the direction the country is taking. They believe that Canada can compete with all comers in the globalizing economy and welcome the opening of new markets for Canada's goods.

In this favorable climate the Chretien government has freely exploited Canada's commitment to the principle and practice of multilateralism in world affairs. Chretien has continued Mulroney's policy of persuading Canadians that trade deals qualify as multilateral initiatives much like peacekeeping and Canada's activities at the United Nations. The Liberal government welcomes and exploits all opportunities for Canada to enhance its trade. Chretien portrays Canadian membership in the WTO as a successful example of multilateral cooperation. Also, Chretien has not missed a chance to demonstrate Canadian independence from American policies on matters like Kyoto and the ICC. He wants to show that Canada still can assert an independent foreign policy without endangering the economic benefits from its close trade and investment relationship with its powerful southern neighbor. The Prime Minister's February 2003 speech to the Chicago Council on Foreign Relations, in which he lectured his audience on the importance of United States support for the UN, NATO, and other multilateral organizations, typifies the Chretien approach. So did Chretien's many pronouncements on Iraq that renounced a Canadian role in a new military operation without explicit United Nations Security Council authorization. Chretien's approach receives a good reception in Canada for walking a fine line between kowtowing to American policy and antagonizing American policymakers. It also reflects and mollifies the Liberal party's nationalist impulse. As if to confirm the Prime Minister's moderation, the New Democrats on the left and the Canadian Alliance on the right deride his policies from opposing perspectives. Polls indicate that Canadians consider the Liberal party "far and away" the best defender of Canada's sovereignty.

The Chretien government also is promoting the prospective Free Trade Agreement of the Americas. Quebec City's Second Summit of the Americas in Spring 2001 represented a Canadian effort to extend NAFTA and Canada's existing trade agreement with Chile into a full Hemispheric free trade zone excluding only Cuba. The events of September 11, 2001 and recent economic crises in several South American countries have stalled any post-summit momentum towards the projected January 2005 FTAA final agreement. Still,

Canada's government knows that recent polls report some 70% of Canadians—and an even higher percentage of coveted young middle class voters—associate trade liberalization with economic growth and multilateral cooperation that can bolster Canada's identity and international reputation. These Canadians expect the FTAA to provide economic benefits to Canada, Latin America, and themselves personally. NAFTA also has raised Canadians' belated consciousness of Latin America, which presently offers Canada its best opportunity to gain important new trade partners and reduce its dependence on the bilateral relationship with the United States.

TRADE OUTLOOK: CANADA POST-CHRETIEN WOOS "THE ONE MARKET THAT COUNTS"

Recognizing that the United States now makes up "the one market that counts," Canada has begun a new initiative to secure even closer trade ties. The Canadian government is simply accepting reality. With merchandise exports to its NAFTA partners having increased 95% between 1993 and 2001 to \$580 billion CDN (only \$15 billion of it with Mexico), Canada knows that it must safeguard and advance its markets in the United States. Canada's \$96 billion CDN merchandise trade surplus of 2001 testifies to the benefits that Canada is deriving from trade deals. Trade Minister Pierre Pettigrew wants to increase Canada's current 19% share of the United States import market. Pettigrew would like Americans to appreciate Canada's contribution to their own prosperity by making them more aware of, and more dependent on, trade with Canada. He also proposes to expand Canada's visibility in the United States and its influence over federal policymaking by persuading Americans at local, regional, and state levels to lobby their members of Congress against protectionist initiatives. Pettigrew evidently believes "all politics is local" in Washington. He thinks that pressure from the states drives congressional and administration policy. Because pressure from Canada has little impact on Congress, it cannot substitute for lobbying Washington from the states.

Of Canada's five parliamentary parties, only the small New Democratic party rejects Canada's full

commitment to the WTO, NAFTA, and FTAA. Prime Minister Chretien intends to retire in February 2004. When Chretien leaves office, former Finance Minister Paul Martin likely will succeed him. Martin and his strongest Liberal leadership rival John Manley support Canadian participation in trade pacts as strongly as does Chretien. So does Official Opposition leader Stephen Harper of the pro-business Canadian Alliance party, as well as the new leader whom the Conservatives will select later this year. Canada's extreme dependence on trade, especially with the United States, precludes a Canadian retreat towards protectionism.

TOWARD—AND BEYOND—A SMART BORDER

Canadians have taken some time to recognize that the events of September 11, 2001 have forever changed the United States-Canada border. For Canada, keeping the border open to the free flow of people and—especially—goods in the face of deepening economic integration has been the paramount priority. Since September 11, 2001 the United States has become increasingly sensitive to border security, principally regarding travel, visas, immigration, refugees, and dangerous goods. In many cases these concerns affect our relationship with Canada more than with any other country. Canada has undertaken some initiatives on its own. For example, Canada has tightened its refugee system, especially concerning the 70% of Canada's refugee claimants who enter from the United States. Canadian passports are being made harder to falsify. Canada's non-citizen permanent residents (called "landed immigrants") are receiving new tamper-resistant identity cards. Technology permitting, Canada soon may require non-citizens to carry biometric cards with embedded fingerprints or even retina scans. Similar cards for all Canadians are under consideration. As in the United States, this last proposal faces strong public and political opposition because of its troubling "big brother" aspects.

Most of Canada's anti-terrorism activity has involved cooperation with the United States along their 5,500-mile border. Prime Minister Chretien designated John Manley as Canada's rough equivalent

to Homeland Security Secretary Tom Ridge. Manley has served as Deputy Prime Minister as well as Finance Minister. By all accounts Manley and Ridge have developed a good working and personal relationship. Their joint Smart Border project has included Integrated Border Enforcement Teams (IBETs) and Integrated National Security Enforcement Teams (INSETs) to cooperate in guarding the border and to help law enforcement, intelligence, and border enforcement agencies exchange information. Most of these units are now in place. The Canadian government asserts that they already are disrupting criminal networks attempting to smuggle illegal migrants (not necessarily terrorists) across the border. Finally, the two countries have undertaken studies to determine the feasibility of joint or shared facilities at certain border crossings across the continent. These include four in Maine, at Calais, Easton, Monticello, and Vanceboro. Overall, Canada has budgeted more than \$5 billion CDN to improve security at its borders. To date, the Canadian public has indicated no serious concerns about the expense of border initiatives or about any threat they may pose to Canada's sovereignty.

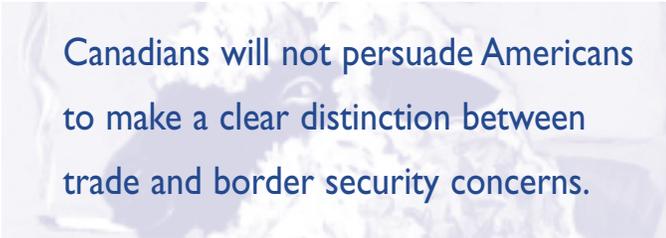
Unfortunately for Canada, these joint ventures are not nearly enough for the United States. For one thing, Congress has passed a law, called the Enhanced Border Security and Visa Reform Act, to require entry and exit controls for every person and all goods crossing the border. As the new law stands, all persons entering or leaving the United States will be logged in and out of the country by the end of 2005. Some of them, presumably young men apparently with Middle Eastern ancestry, will be fingerprinted and photographed.



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The Canadian government considers ethnic profiling improper and inconvenient. Canada has asked Secretary of State Colin Powell for a blanket exemption from these new rules. It is not likely to receive one.

Much worse from the perspective of Canada's economic interests, other American legislation will require truckers to provide up to a full day's notice of commercial shipments into the country by late this year. The trucking industry insists this is unworkable, especially in the highly integrated auto industry where companies routinely issue rush orders on short notice to their factories on both sides of the border without regard to whether any particular shipment must cross the border. The new Free and Secure Trade (FAST) program, now operational at six of the busiest border crossings, may alleviate these inconveniences to some extent. Under FAST, low-risk companies that frequently use these crossings may apply for special expediting privileges. None of the FAST crossings are in New England. The similar NEXUS single alternative inspection system offers express clearance to individual travelers who cross the border frequently at a few high-volume crossings.



Canadians will not persuade Americans to make a clear distinction between trade and border security concerns.

Neither NEXUS nor FAST reassures Canada's business community. Led by the Canadian Council of Chief Executives and the Canadian Trucking Alliance, business interests have lobbied vigorously in Ottawa to persuade the federal government to implement a perimeter policy with the United States. They hope that the American government will agree to exempt Canada from border controls if the two countries create a North American perimeter by upgrading the free trade pact to a customs union with a common external tariff, and implementing similar (possibly identical) policies

on travel, visas, immigration, and refugees. Even the Liberal-majority Canadian House of Commons Committee on Foreign Affairs is considering a recommendation that the government pursue a customs union.

Former Canadian ambassador to the United States Allan Gotlieb similarly suggests that Canada exploit its favorable position in North America while Americans are preoccupied with homeland security. Canada should take advantage of this opportunity to present a package of proposals offering nothing less than a "grand bargain." The two countries might profitably negotiate a "community of laws" featuring a customs union, a common perimeter, abolition of all trade remedy laws, and a single set of binding rules guaranteeing free movement of people and goods across the border. This arrangement would give the United States the fully integrated border, immigration, and security policies it desires. Canada would get assured access to the American consumer market, finally freed from the threat of countervailing duties. A successful application of Gotlieb's linkage would give both countries what they want and need most. Because Congress's protectionist forces will derail incremental or sectoral initiatives, Gotlieb insists that, like the Free Trade Agreement of the 1980s, his proposed grand bargain must be comprehensive. But Gotlieb is vague on sensitive issues. For example, who would draft his proposed set of laws, who would interpret these rules, and who would determine the standards for interpretation?

To date Manley has declined to consider such a far-reaching initiative. Public opinion in Canada may not be prepared to endorse this level of integration. After all, the harmonization of the two countries' policies almost certainly would require Canada to adopt many American practices. The Liberal government is well known for its sensitivity to public opinion. Its polling firm Pollara continually measures opinion on these and other issues through focus groups. However, the public can change its mind quickly. If the United States implements its new border policies, and particularly if foreign investors and Canadian-based firms relocate south of the border to avoid border delays and other uncertainties and inconveniences, Canadians and their government will give a perimeter proposal like Gotlieb's

another look. They may even do so preemptively if they believe these developments are about to occur.

CONCLUSION

Canadians seem genuinely divided on the current status of Canada's relationship with the United States. Some well-known Canadians, like Gotlieb, lament that Canada is acting like a "fading power" that has lost much of its former prestige, credibility, and clout in its international relationships generally. These observers fear that Canada invests too little in its military and infrastructure maintenance. Equally damaging is Canada's failure to cultivate close ties with American political leaders. Some Canadians fault Chretien for neglecting his personal relationship with President George W. Bush. For these reasons, they argue that Canada's leaders cannot induce American policymakers to seriously consider Canada's positions on trade, border security, or other matters. Others strongly disagree. They insist that Canada retains the moral authority, international reputation, and economic strength needed to influence other countries. Even if this is so, trade and border security issues must contend with powerful constituencies in the United States that do not always share Canada's positions or interests.

Fading power or not, Canadians will not persuade Americans to make a clear distinction between trade and border security concerns. Instead, the two governments eventually may combine trade and border security into a single integrated strategic plan. Any ambitious package will raise alarm among Canada's nationalists. However, the great disproportion in the two countries' power and in their reliance on each other will convince a large majority of Canadians to overcome their reservations. They will accept some sacrifice of national sovereignty to maintain indispensable benefits in their trade and investment relationship with the United States. All in all, the freer movement of goods, services, capital, technology, and possibly also workers across the border, with or without a formal perimeter policy, would only acknowledge Canada's dependency and vulnerability in its post-NAFTA and post-September 11, 2001 relations with the United States. 🐉



Howard Cody is Associate Professor of Political Science and Canadian Studies at the University of Maine. His work on Canadian parties, Parliament, and elections has been published in *Political Studies*, the *American Review of Canadian Studies*, *Inroads*, the *Canadian Parliamentary Review*, and *Australian Canadian Studies*. His present research addresses current issues in Canadian-American relations and the prospects for Canada's New Democratic and Alliance parties of the left and right.