

Beyond the Border: It's time to retry the 'third way'

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As the so-called war on terror winds down, 10 years after 9/11, one of its victims continues to be the permeability of the Canada-U.S. border. The "longest undefended border" in the world is still "thickening."

In an effort to reverse this trend, Prime Minister Stephen Harper and President Barack Obama signed a declaration in February of a "shared vision for perimeter security and economic competitiveness" – also known as the Beyond the Border agreement – to try to unclog the border.

Getting a satisfactory deal on this issue will probably be Mr. Harper's major foreign policy challenge during the first year of his new majority government. So far, all negotiations, at both the ministerial and the bureaucratic levels, have been conducted behind closed doors. So it's difficult to assess how the talks are going.

Some press reports claim many separate and discrete "packages" of issues are being negotiated and that these "packages" will be publicly released, one by one, in the autumn. There will be no comprehensive treaty such as NAFTA.

Some "packages," such as those relating to commercial traffic, will not be controversial. Others that may touch on personal privacy issues, national sovereignty or harmonization of regulatory regimes in both countries will be the subject of intense debate on both sides when details emerge.

The negotiations will be difficult for Canada because Mr. Obama is neither Ronald Reagan nor Bill Clinton, both of whom went to the wall for trade agreements with Canada in the 1980s and 1990s. Plus, the pusillanimous Mr. Obama is entering a presidential election season where the cruel canyon between him and his opponents is deeper than any that existed during the times of Mr. Reagan or Mr. Clinton. Mr. Obama is unlikely to spend precious political capital on this deal.

On the Canadian side, Mr. Harper, despite his majority victory, is not changing his desire for secrecy and control. As trust in politicians throughout the world continues to drop precipitously, he, too, will be caught up in this decline. So selling the more controversial "packages" of this agreement will be tougher than it was to sell NAFTA in the 1990s.

After seeing how weak the dispute settlement processes turned out to be in NAFTA, Canadians will be anxious to know what mechanisms for dispute settlement will be put in place by the Beyond the Border negotiations – and what kind of binational institution, if any, will be created to manage the agreements.

Canadians know that another 9/11-type U.S. incident – especially if it's connected in any way with Canada, as many Americans still incorrectly believe 9/11 was – could bring the whole set of agreements tumbling down. Can this be prevented?

Another danger is the little-noticed and bizarre anti-international law movement that started in Oklahoma and is threatening to engulf other states. Oklahomans recently amended their constitution to prohibit Oklahoma's courts from referring to or obeying international treaties. Xenophobia and paranoia are still on the march in post-9/11 America and could seriously affect any deal with Canada.

If the "packages" are not concluded before the 2012 U.S. elections, it's possible that, even if he's re-elected, Mr. Obama will be faced with a more "tea-partied" Congress, one in which moderates of both the left and the right will have been replaced by extremists. That outcome will not help Canada in these negotiations.

What if the whole process collapses? The consequences of failure will mean that Canada-U.S. trade, already in decline, will continue to diminish. That will also adversely affect Canada's GDP, as it has done since 9/11. Canadians, despite their long and close relationship with America, may reluctantly have to accept that sad fact.

Indeed, the time has probably come for Canada to again seek "third way" international trade negotiations, negotiations that were tried by, and failed under, prime ministers from John Diefenbaker to Jean Chrétien. Mr. Harper, wisely, has already begun seeking these deals. After all, other countries will always want to buy what Canada mines, chops, pumps or makes. It's time to get closer to them.

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