

The Cost of Trump's Transactional Approach to Trade

John Weekes

The postwar, U.S.-led global trading system, along with the Bretton Woods institutions, has formed the economic backbone of the liberal world order of the past half-century. While the World Trade Organization went through a decade of melodrama as the early target of anti-globalization sentiment that has resurfaced politically in the past year, multilateral trade deals have made a comeback in the form of the now-precarious Trans-Pacific Partnership and the WTO's Trade Facilitation Agreement, among others. With an anti-multilateralism president preparing to occupy the White House and China eager to take over the leadership role from the U.S., what should Canada do?

Since the Second World War, the United States has been the leading power in fashioning the structure of the global trading system. The system has been extraordinarily successful in growing trade and keeping markets open. It has provided a framework of predictable rules under which the private sector in various countries has been able to invest with confidence. Throughout this period, trade liberalization has been a major contributor to global growth, bringing hundreds of millions of people out of poverty. The system has also reduced trade tensions between countries and helped to preserve world peace.

The most important feature of the system is that it is rules-based. The vision of a framework of international trade law to keep markets open was pursued effectively by leading American statesmen such as Cordell Hull, President Franklin D. Roosevelt's secretary of state. The resulting agreements—first under the General Agreement on Tariffs and Trade (GATT)

and then the World Trade Organization (WTO)—have been crafted in a way that borrows in important ways from American domestic experience with the rule of law. For the U.S. this has been a very successful endeavour. While other countries have at times complained about the key role of the U.S., they acknowledge it has also been beneficial for the world.

It is astonishing, therefore, that the U.S. now has an incoming president who seems to find these American-inspired agreements problematic and appears to prefer proceeding on the basis of a series of individual deals. But this seems to be how he wants to proceed domestically as well, as we have seen with his recent intervention with Carrier. On November 21, Donald Trump provided a video “update on the transition and our policy plans for the first 100 days” in which he announced that on day one he is “going to issue our notification of intent to withdraw” from the TPP (Trans-Pacific Partnership). “Instead,” he continued, “we will negotiate fair, bilateral

trade deals that bring jobs and industry back onto American shores.”

The U.S. retreat from the leading role in shaping the global trade order will be seized on by China as an opportunity to pick up the U.S. mantle and work to fashion the trading system to suit its interests, but not those of other countries like Canada that want a system based on the rule of law.

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As has been noted, there is a big difference between campaigning and governing. Trade policy and negotiations are the prerogative of Congress under the Constitution. Congress has delegated authority to the president to negotiate trade agreements subject to the objectives and explicit conditions set out in that law. The most recent delegation of authority was in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Among other things, this law requires the president in negotiating trade agreements to work closely with Congress and legally mandated private sector advisory committees. The leadership of the majority Republican Party in Congress clearly values trade agreements, as does the business community. These forces

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Taken at face value, Trump's approach to trade negotiations is not good news for Canada. During the campaign, in his "contract with the American voter", Donald Trump stated that, as the first of "seven actions to protect American workers", he would "announce my intention to renegotiate NAFTA or withdraw from the deal under Article 2205." However, given the factors described above, it may well be some months before we know what the actual approach of the new administration will be.

For the time being, my advice to the Canadian government would be to keep its head down but initiate internal preparations for a possible renegotiation of NAFTA. A key factor to bear in mind is that the starting point for Trump and his close advisers is making "deals" that favour Americans and "balance" trade rather than seeking a framework of rules that allows all to compete on the basis of the same agreed rules. This is not an environment conducive to a good result for Canada or any other country.

If the administration decides to go ahead and formally propose the initiation of a renegotiation of NAFTA,

American preparations will move into a detailed phase to ensure that all significant American interests are properly taken into account. At that point, the sort of issues identified in the 2016 National Trade Estimate Report on Foreign Trade Barriers will come into play. This report required by law is produced annually by the Office of the United States Trade Representative. It provides "an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights". For Canada, the 2016 list includes such measures as:

- Canada's agricultural supply management system for dairy and poultry
- Restrictions on U.S. grain exports
- The personal duty exemption
- Restrictions on the sale of wine, beer and spirits
- Support for the aerospace sector, including Quebec support for Bombardier
- Intellectual property rights protection (including copyright and the patent utility requirements for pharmaceuticals that the Canadian courts have adopted)

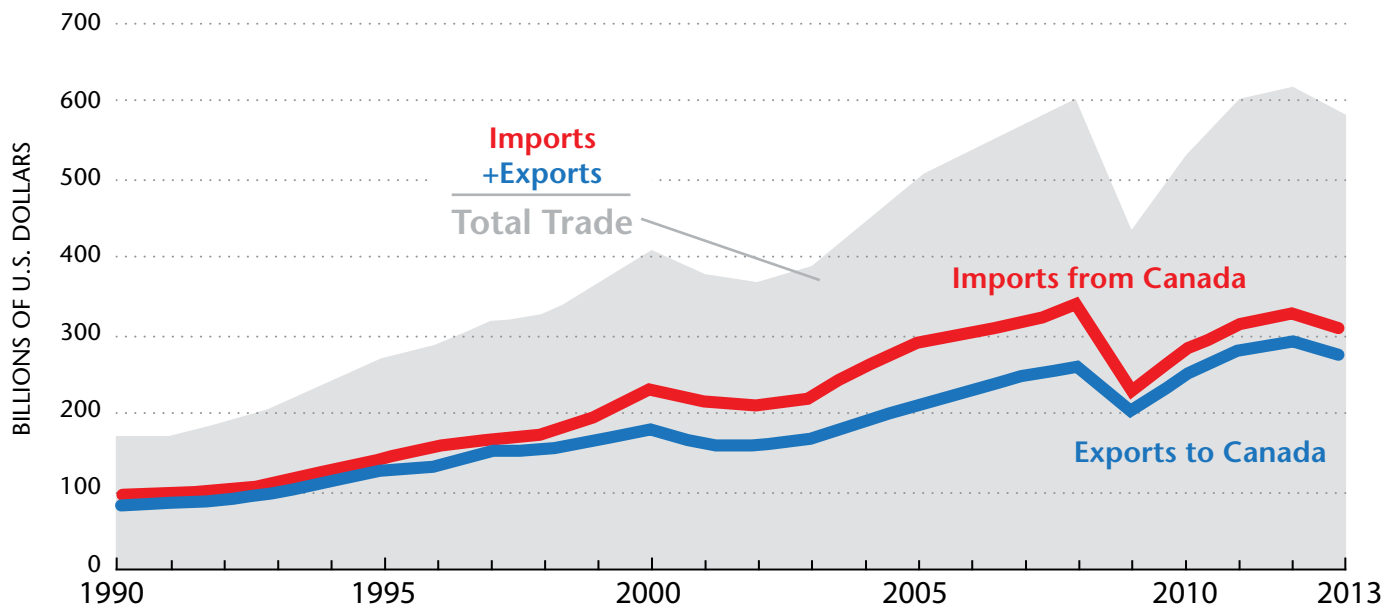
- Telecommunications investment restrictions
- Canadian content in broadcasting
- Investment barriers

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Other matters might also be on the table in a NAFTA renegotiation, particularly if it is the first negotiation for the new administration. Think for instance about the absurd claim by Trump and Wilbur Ross, his nominee as commerce secretary, that in the hands of a foreign government a VAT operates as a subsidy to exports and as barrier to imports. Would this bizarre thinking apply as well to the GST and the HST?

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Figure 1: U.S. and Canada Trade in Goods has Increased Threefold Since 1990



Source: U.S. Census Bureau

agenda with Canada that American negotiators could bring to the table.

We need to develop an equivalent agenda that Canadian negotiators could put on the table. The government should assign this a high priority. The government should also establish improved machinery for consulting effectively with the private sector as well as work closely with the provinces.

As some commentators have recently pointed out, if the NAFTA were to disappear, the Canada-U.S. FTA would come back into force and, therefore, losing NAFTA would be no big deal for Canada. This is a very simplistic view. The first impact would be an environment of considerable uncertainty. What would happen to North American supply chains? What would be the actual effect on Canada-U.S. trade of replacing NAFTA provisions, now in force for nearly a quarter of a century, with the less comprehensive FTA ones? And if the U.S. wanted to pursue an agenda with Canada might it also threaten to invoke the six-month termination clause in the FTA?

Here are a few of the specific problems Canada would encounter in returning to the FTA:

- A major FTA achievement, the binational panel system for addressing antidumping and countervailing disputes, expired under the FTA after 7 years. It was made permanent under NAFTA. This much-touted mechanism would no longer exist. It would not be replaced; the Americans never liked it.
- Going back to the less precise FTA rules of origin would risk returning to FTA era disputes (Honda, GM-Cami) about whether certain Canadian made products qualified for FTA treatment.
- Losing the strong NAFTA framework of rules for trade in services and investment under which companies have expanded and invested for over 20 years would pose serious uncertainties for established business relationships.
- Some have questioned the utility of keeping the investor state dispute settlement provisions of NAFTA. They may be about to become

more useful to Canadian business in a more protectionist U.S. trade environment where deal making may trump a framework of laws and regulations.

- Unlike the FTA, NAFTA has an effective provision to protect Canadian exporters from being sideswiped in a general U.S. safeguard action against injurious imports from all countries when Canadian products are not part of the problem.
- The general intergovernmental dispute settlement procedures in the FTA were strengthened in NAFTA.

Clearly, as part of its policy preparations, the Canadian government should take a deeper look at just what would be involved in going back to the FTA. This short analysis suggests the outcome would not be good for Canadian business.

In addition, the Canadian government should be identifying areas where we might share common ground with the incoming administration, e.g. energy pipelines.

And, very important, the government should be intensifying advocacy efforts with potential allies inside the U.S.. In pursuing this objective the government should work with the provinces, cities, business, and civil society making this a true national effort. We have a very good story to work with that includes the following:

- Canada is the U.S.'s largest customer, purchasing US \$338 billion in goods and services in 2015.
- Canada is the top export destination for 35 states.
- Canada buys more from the United States than does any other nation—including all 28 countries of the European Union combined.

Now is the time to be underlining these points with Americans while they are still determining what the approach of the new administration will be.

The TPP would offer significant benefits to Canada including some useful updating of the NAFTA. Trump seems to have abandoned TPP but the Congressional leadership is urging him to reconsider and most of the American

business community is strongly in favour. Japan is continuing to urge the U.S. to ratify and it seems likely securing a TPP deal with the U.S. will remain Japan's top trade policy priority for some time.

In this situation the Canadian government should:

- Determine soon what its position is on the TPP, and assuming it is in favour
- Work with Japan and domestic allies in the U.S. to urge a reconsideration of the approach to the TPP by the Trump team.

In addition, Canada should:

- Expedite the agreed exploratory discussions for a possible Canada-China FTA.
- If it is clear TPP is dead, work with Japan to resume our bilateral free trade negotiations with a view to an early conclusion.
- Propose the negotiation of a free trade agreement with the ASEAN countries (i.e. Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam).
- Devote more resources to realizing the APEC heads of government objective of a broad free trade agreement of the Asia Pacific region (FTA-AP), which would include China.
- Reconsider seeking to be part of the China led Regional Comprehensive Economic Partnership (RCEP) negotiations provided we conclude that the emerging agreement is of a sufficiently high quality.

Working with the Trump administration on the trade front will be challenging. One thing seems highly likely; the policies of the next administration will be largely determined by Donald Trump himself. It follows that the relationship at the top between Trump and the Prime Minister will be critical for Canada. Prime Minister Trudeau should accord a very high priority to building an effective relationship. **P**

John Weekes was Canada's chief negotiator in the NAFTA trade talks with the U.S. and Mexico. He is now Senior Business Adviser at Bennett Jones LLP. weekesj@bennettjones.com