

January 1987

The Political Environment of North America

Jennifer Lewington

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

 Part of the [Transnational Law Commons](#)

Recommended Citation

Jennifer Lewington, *The Political Environment of North America*, 12 Can.-U.S. L.J. 169 (1987)
Available at: <https://scholarlycommons.law.case.edu/cuslj/vol12/iss/20>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

The Political Environment of North America

*by Jennifer Lewington**

INTRODUCTION

Three years ago, a political romance bloomed between Canada's Prime Minister Brian Mulroney and United States' President Ronald Reagan. By March 1985, at their first "Summit" meeting in Quebec City, the love-affair was in full flower. To the tune of "When Irish Eyes are Smiling," the two Irish charmers sang declarations of common purpose in harmony, giving voice to hopes for a free trade agreement between the two countries.

But by early 1987, even as the bilateral talks moved into higher gear, the bloom was off the bilateral rose, wilted by misunderstandings. Such was the Reagan Administration disillusionment with the Mulroney Government that more than one senior U.S. official longed wistfully for the return of Pierre Trudeau! The hopeful song of cooperation at Quebec City has given way to discordant disputes over trade, environment, energy, culture and arctic waters navigation. Months ago, Washington wags renamed this week-end's "summit" the "plummet," a measure of how far expectations had plunged from those heady days of three years ago.

Since that time when they basked in unprecedented popular support at home, the two leaders have suffered major political set-backs. Both are mired in controversy, down in the polls and struggling to restore lost credibility. Their crippled state raises questions about their ability to deliver much in their final two years together.

For the Summit, President Reagan and Mr. Mulroney will be upbeat about the trade talks, without resolving basic differences on acid rain. The President's preemptive strike on acid rain in mid-March, promising again what he had promised to do a year ago, removed any immediate risk of unpleasant words from Mr. Mulroney. The best they can hope is to escape their glorified photo-opportunity as quickly and quietly as possible. The same smoothing-over may not be as easy for a meaningful trade deal since the negotiators will have to resolve substantive differences or settle for a modest package.

THE PAST AS PROLOGUE

The April Summit serves as a timely occasion for examining past

* Washington Correspondent, Toronto Globe and Mail.

failures and assessing future opportunities. One major paradox stands out: though the two countries are drifting closer economically, they are pursuing different goals. The divergent approaches, evident from past disputes, shape how the two countries cope with economic change and sow the seeds of future conflicts.

Both countries are increasingly uncertain about their place in the world. As a small trading nation worried about global market access, Canada wants to hitch onto the American wagon with a free trade pact which codifies the special status Canada has long enjoyed on an ad hoc basis. The United States is ambivalent about its own future, torn between defensive protectionism and an aggressive impulse to impose its version of the economic rule book on others. Both choices represent a form of isolationism, an outlook with little room for special favors to friends.

The United States is suffering a crisis of confidence, certain that others are to blame for its economic difficulties but perplexed about the most effective remedies. The rise of Japan as a global economic force in the last 20 years and, more recently, the emergence of newly industrialized countries as manufacturing competitors, have delivered a one-two punch to knock the United States off its pedestal of post-war pre-eminence. No matter that some of the deepest problems are self-imposed—like the run-up in the federal budget deficit during the Reagan years. Neither the Administration nor Congress have shown the political will to swallow the required medicine at home.

Against this backdrop of political and economic uncertainty stands the free trade initiative; a test of two neighbors' resolve to work together. Canada is eager to stand under the American economic umbrella, fearing the chilly rains of protectionism. The United States is prepared for some company as a means to an end—to send a message to the rest of the world. It says: join our train of trade liberalization or we'll leave the station without you.

THREE BILATERAL MYTHS

For all the apparent enthusiasm to work together, the bilateral relationship has faltered in a rare period of unabashed pro-Americanism by a Canadian leader. One explanation lies in the myths perpetuated by each country about the other in the world's most clichéd relationship. A series of episodes, including the handling of the free trade talks, chronicle a seeming inability to communicate well across the 49th parallel.

Take the first big myth—Canada and the United States as best friends. True, but what an odd friendship, fed by insecurities in Canada and indifference in the United States. Prime Minister Mulroney's strategy of "pals diplomacy" created unreasonably high expectations of what could be achieved and only accentuated the subsequent disappointments.

In June, 1986, the day the U.S. House of Representatives passed a

protectionist trade bill, the President slapped a 35% tariff on Canadian exports of cedar shakes and shingles. In its haste to lob some mortars in its trade fight with Congress, the White House ignored the much-vaunted personal friendship between the President and Prime Minister and their Quebec City pledge not to restrict trade. The ensuing howls from Mr. Mulroney, taunted at home for cozying-up to the President, only confirmed Washington's peevish view of Canada as a nation of "whiners."

Then there is the second myth—the longest undefended border. Without the guns, the more insidious weapon is silence. Canada looks south through a one-way mirror, equally envious and appalled by the overwhelming clout of the United States. The United States looks north and sees only itself in the mirror. When Canada elected a conservative government, the Administration misread the results as a real shift to the right. At first, the great expectations seemed fulfilled as the Mulroney government loosened up on energy and investment restrictions. But the Administration soon chafed over Ottawa's book publishing policy and foot-dragging on drug patients, two sensitive issues for American multinationals.

Though Americans are not as smug as Canadians who think they know their neighbors, the results still can be damaging. U.S. Trade Representative Clayton Yeutter held up the one-way mirror last February when, in remarks to a largely Canadian audience in Washington, he expressed bewilderment over Canada's pronouncements on cultural sovereignty. Mr. Yeutter declared that he was prepared to risk American culture being over-run by Canada in the free trade talks, so Canadians should take the same risk for their culture. His ham-handed comments reflected an American assumption that Canadians are just like them—as a high compliment by an American and taken as a low insult by a Canadian.

Finally, there is the third myth—the United States and Canada as each other's most important trading partners. The statistical truth is not a political or an economic verity. Increasingly, Japan is the number one economic partner and rival of the United States, followed by the European Economic Community. For geopolitical reasons, Washington thinks first about Tokyo, Bonn, or London, assuming correctly that Ottawa is a predictable ally and not a threat.

As if old myths were not enough to hobble the relationship, a series of miscues tripped up the free trade talks over the past 18 months. In September, 1985, after a year of dithering, Prime Minister Mulroney wrote to President Reagan asking for free trade negotiations. Preoccupied with fighting political fires on trade at home and mobilizing an international attack on the high U.S. dollar, the Administration responded to the historic Canadian overture with a deafening silence.

Three months later, when President Reagan finally asked for a green-light for the negotiation, key members of Congress successfully linked the proposed negotiations to a simmering dispute over Canadian

softwood lumber. By April, 1986, that linkage almost scuppered a go-ahead for the negotiations. Desperate to escape an embarrassing defeat in the committee, the President acceded to demands from key senators to settle the lumber issue soon. The President's undertaking, a far cry from the "clean launch" sought by Mr. Mulroney, illustrated how differently the two countries approached the talks. In Canada's view, the negotiations were supposed to prevent the initiation of any further trade actions. Such a "standstill" arrangement, from the U.S. point of view, had no legal or political foundation. Instead, the Administration opened the door to the softwood lumber petition and did not stand in the way of other trade cases against Canada.

THE PRESENT STATE OF PLAY

Since the bilateral talks opened a year ago, the U.S. political climate has clouded considerably. First, the Democrats now control the Senate. This virtually guarantees the passage of an omnibus trade bill this year. Treasury Secretary James Baker immediately grasped the new circumstances and made conciliatory overtures to Congress about a trade bill, but Democrats and Republicans agreed that the Administration had stalled too long. Second, the unchecked rise of the U.S. merchandise trade deficit over the past five years, soaring to a record \$170 billion in 1986, added to the gathering clouds. Despite the Administration's reversal on the dollar in 1985, the subsequent sharp decline in the currency had not fed through fast enough to the trade deficit.

Accordingly, Congress is gripped by the politics of trade, with Republicans frustrated with the White House and Democrats convinced that trade is their issue for 1988. Unlike past legislative trade history, Congress is in the driver's seat and the Administration is running to catch up.

But there are a lot of congressional drivers tugging at the reins. The key committee chairmen in the House of Representatives and the Senate, Dan Rostenkowski and Lloyd Bentsen respectively, are at odds with their own leaders over substance and tactics in the trade debate. Both Mr. Rostenkowski and Mr. Bentsen want a bill that the President will sign this year and recently moderated some of the most overtly protectionist ideas.

The Administration is ambivalent about trade policy. While rhetorically committed to free trade, the Administration has made pragmatism a hallmark of trade policy over the past six years. When pushed, the White House has bowed to domestic pressure and, as a result, has accelerated the drift toward managed trade across major sectors, ranging from cars and steel to semiconductors. In its about-face on a trade bill this year, the Administration has again acted pragmatically, giving limited endorsement to congressional proposals once rejected out-of-hand.

A third political complication is the President's difficulties over the

Iran-Contra Affair. In the months after the scandal broke in November, 1986, the White House was unable to focus on much else than the crisis at hand. The President's competitiveness package, unveiled in the State of the Union message in January, was an attempt to grab the reins on trade. Armed with a grab-bag of measures to help American industry compete more effectively, the White House planned to take over the trade debate as it had done so successfully with tax reform last year. But the President's health problems and the Iran-Contra debacle immobilized the White House, leaving Congress with the upper-hand on trade.

The changed political climate complicates life for the U.S. free trade negotiators. They can think big on trade liberalization, but the political reality is that, increasingly, the Administration, is thinking small. The recent U.S. decision to block a Japanese takeover of an ailing American semiconductor manufacturer underscores the extent of American anxiety about the new economic order. Moreover, U.S. negotiators must act more cautiously in the face of an activist Congress that is determined to put its stamp on trade policy.

Nevertheless, the Reagan Administration needs a bilateral pact more than ever to further its global trade objectives. An accord with Canada on investment, services and intellectual property (copyright and patents), quite aside from its impact on the North American economy, would breathe life into the multilateral round launched last year. For Administration trade officials, a bilateral deal with Canada is the only game in town before President Reagan leaves office.

By any political yardstick, the White House has not stuck its neck out very far yet on the trade talks with Canada, though the rhetorical commitment is certainly there. In January, the President threw a one-line endorsement into his State of the Union message. U.S. Vice President George Bush's emergency trip to Ottawa the same month led to a more regular discussion of the talks by the Cabinet. But these gestures have not altered the Administration's basic view that a deal, while a stated "priority," must be sold to U.S. business and Congress as an economic package, not as a political necessity.

This is a marked contrast to the political overtone given the talks by the Mulroney Government. The U.S. attitude is in part a negotiating tactic, so as not to appear too eager. But it also reflects unease about the Mulroney Government's low ratings at home. The Administration wonders whether Mr. Mulroney can make the concessions needed for a *big* agreement and bring the provinces on board as well.

In addition, the new political environment presents a dilemma for Congress. Often painted as unrepentent protectionists, the Democrats are reluctant to be stuck with the label. Mr. Reagan still holds the ideological high-ground as a free trader and the Democrats do not want to be blamed for mixing a "free and fair" trade deal with Canada. Soon after regaining control of the Congress, leading Democrats opened a new, more subtle debate on trade which acknowledged the changed political

circumstances. Using words not unlike those of the Administration, the Democrats argued for tougher trade rules to crack open protectionist foreign markets. Texas Democrat Lloyd Bentsen, Chairman of the Senate Finance Committee, set the new tone in December, 1986. While leading the charge for a "tough" trade bill, he went to Ottawa to endorse the bilateral talks, chiding the Administration for the slow progress to that point.

Coincidental with the Bentsen visit last December, the bilateral talks began picking up steam. After months of skirmishing, the negotiators started to grapple seriously with all the issues required for a comprehensive agreement. Even, however, on the least controversial topics for which there are partially drafted texts, the negotiators still have disagreements of principle. Some of the most difficult issues, such as investment, have been barely discussed. Nonetheless, the chief negotiators hope to have a bracketed text by June and a finished product by early October, before U.S. authority for fast track approval expires in January, 1988.

Peter Murphy, the chief U.S. negotiator, is quietly reporting to Congress on his progress in the negotiations. For the moment, Congress is preoccupied with the trade bill and has not focused on the Canadian talks. But low interest now does not imply acquiescence later. Congress will wait and see what kind of package Mr. Murphy brings this fall.

FUTURE PROSPECTS

On the U.S. side, the fate of the free trade talks will be determined by four factors. First, what happens to the omnibus trade bill. Under the present timetable, Congress could have a new trade bill signed by the President months before a pact with Canada first comes up for consideration this fall. If made law, the current proposals would apply U.S. trade rules more rigorously to protect domestic industries from unfair competition here and to open up foreign markets. Having just passed these measures, Congress may be asked to endorse a special bilateral arrangement that erodes the new bill by excusing Canada—one way or another—from the reach of U.S. trade law. While open to discussing ways to resolve bilateral disputes, members of Congress will be reluctant to cede authority to a new, untested body.

Without passage of the omnibus bill, a bilateral agreement may have an easier time winning approval. Congress would be less hemmed in and might be more disposed to groundbreaking ideas in a bilateral pact. If the President upholds a possible veto of the trade bill, he strengthens his political hand for selling a free trade deal to Congress. Both the Administration and Congress want some political kudos on trade and a relatively uncontroversial deal with Canada serves that end.

The second factor is the mood of Congress when it looks at a bilateral deal. The trade talks face their first big hurdle in Congress when the negotiators finish haggling this fall. In early October, the Administration

is expected to notify Congress of its intention to table an agreement ninety days later. Between October and January 3, 1988, any congressional committee can hold hearings on trade pact issues over which it has jurisdiction. Members of Congress who are displeased with particular features could pick away at a deal before it goes to the President for his signature by January 3, 1988.

After that date comes the second hurdle. Once the President sends a signed agreement to Capital Hill, Congress has ninety days to accept or reject an agreement without making modifications. This phase could be less troublesome if, during the fall, the Administration has already pre-sold a deal. But there is always risk that members of Congress could hold up approval for reasons unconnected with trade talks.

In general, Canada inspires a vaguely warm feeling on Capital Hill in contrast to the chilly treatment of Japan, South Korea, and others for running large trade surpluses. While hard to measure, Congress' latent sense of good-will towards Canada suggests some willingness to approve a pact. The removal of Canadian tariffs and non-tariff barriers, with the provinces fully on board, has some appeal. But Congress will pay as little as possible to get it.

If an agreement still faces opposition, there is no dependable core of congressional allies to call on. From time to time, even Canada's nominal friends in Congress have serious complaints. As prosaic as they sound, hogs, logs, suds, and spuds are the meat of Canada-U.S. conflicts on Capital Hill. The Senate Finance Committee's near-derailment of the free trade talks last year dramatically demonstrated the potential for trouble. Just last month (March, 1987) the same Committee, prodded by a usually sympathetic border state senate, denounced Canada's recent trade action against American corn, thwarting a resolution to endorse the trade talks.

To the degree they have thought about it, members of Congress have grave reservations about the specifics on Canada's wish-list. Even with big concessions from Canada, Congress has no incentive to accept Canada's prime request for a binding, binational body for trade disputes. Israel, with a truly potent political lobby on Capital Hill, failed to win such an exemption in its agreement two years ago.

The third factor is the President's standing at the time of a trade deal. Though limping badly now, President Reagan has the capacity to make a partial comeback. With less than two years left to recoup from the Iran-Contra scandal, President Reagan needs some big ticket successes on the legislative and diplomatic fronts. An arms control agreement with the Soviets, for instance, would give a nice finishing kick to his presidency.

If President Reagan fails to pick up lost political ground in the next few months, he will not have the political chits needed to woo a reluctant Congress when the vote is expected by early 1988. By then, Congress

will be looking beyond this President to his successor. Despite his impressive knack for gentle arm-twisting, President Reagan will be cautious about signing a deal if he is faced with ratification problems in Congress.

The fourth factor is the contents of a trade package. On one level, both the Administration and Congress have no ideological opposition to a pact, having accepted the premise of closer economic ties over which Canadians have agonized for two years. But on a deeper level, neither the Administration nor Congress have shown much enthusiasm for paying much of a political price.

A trade deal, assuming one is concluded next year, will test the two countries' willingness to pull together as they drift closer economically. So far, they have not resolved the basic paradox of the trade negotiations. Many in Canada expect a deal will be a panacea for the current round of disputes. Yet the growing U.S. taste for managed trade suggests new, not fewer trade frictions. For its part, the United States has no interest in providing a more secure market here unless Canada pays well to get it. Domestic producers threatened by rising imports, be they from Canada or abroad, will want regulatory protection. Moreover, the United States expects that a free trade agreement will force Canada to sing from the same economic hymn book more often. But in moving closer economically, Canada will be more conscious about exerting its political autonomy, creating the potential for bilateral disagreements.

The myths of the relationship will continue to get in the way as well. The United States may even take its neighbor for granted more often, assuming that a trade pact will make Canada more like the United States. In any case, the United States will be preoccupied with its larger struggle to reclaim first place as an economic power. A successful conclusion to the free trade talks will depend on the ability and willingness—talents so far in short supply—of both countries to look beyond the myths and forge a more effective North American alliance.