A SAFE AND SMART BORDER:

The Ongoing Quest in U.S.-Canada Relations

CHRISTOPHER SANDS + LAURA DAWSON

ONE ISSUE TWO VOICES

From the American author
CHRISTOPHER SANDS

- A "special relationship" between Canada and the United States is unattainable. The United States isn't interested in that kind of relationship.
- The Beyond the Border Action Plan and the Regulatory Cooperation Council will make limited gains on easy goals, gather data on promising new ideas being tested in pilot projects, and advance discussions on trickier issues.
- Canada should push the administration to give it stronger support.

From the Canadian author
LAURA DAWSON

- The real challenge is whether the agreement can move beyond short-term political deliverables to provide a framework for long-term change.
- Canada is the more nimble partner in these negotiations. It is also the partner for whom the agreement is more important.
- Canada must overcome its attachment to the bilateral special relationship and be prepared to expand the agreement to other trading partners.

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INTRODUCTION In the last two decades, the entire system of international trade has changed—first with the round of free-trade agreements, then with the growth of global supply chains, and, after September 11, with the focus on ever-tighter border security and regulation. The Beyond the Border (BTB) and the Regulatory Cooperation Council (RCC) Action Plans are just the latest steps in the negotiations between the United States and Canada to strengthen the world's largest trading relationship and enhance the security of their people.

The experts writing the essays here set out their views of the radically different American and Canadian approaches to the new border strategy. Our American author, Christopher Sands, senior fellow at the Hudson Institute, argues that the United States has its own agenda in these talks—one that is firmly rooted in his country's goals in the global economy and in the reality of the political system at home. He examines six issues that always dominate this agenda: inclusivity, exclusivity, reciprocity, replicability, portability, and expediency. No matter who wins the election in November 2012, Barack Obama or Mitt Romney, these objectives will not change. In its negotiations with Canada, the United States will continue to seek a single North American market for goods and services that can compete with a rising China, a revived Europe, and other global economies.

Our Canadian author, Laura Dawson, a specialist in Canada-U.S. economic relations and president of Dawson Strategic, agrees that the United States operates from this international perspective. Canada's greatest stumbling block in negotiating with the United States, she says, is its nostalgia for an exclusive "special relationship" with its southern neighbor—one that never really existed. Canada would be far smarter to accept that the United States will extend the deals it makes within North America to other countries and to profit by being there first. It should also set out to win needed friends among the congressional representatives and special interests in the northern states and combine its goals with theirs for cross-border trade and mutual support in Washington. Perhaps Canada's greatest challenge is to manage expectations at home: the safe and smart border both countries want will come not through glamorous summits between our leaders but through diligent work by mid-level officials in drafting documents and defining strategies.

The Canada Institute thanks the authors for their incisive perspective on a critical and complex issue in the ongoing bilateral dialogue.

STEPHANIE McLUHAN
Program Consultant (Toronto)
Canada Institute
September 2012

Christopher Sands

SECURING THE PERIMETER: WHAT IT WILL TAKE TO DO A DEAL WITH THE UNITED STATES

The decade of the 1990s was a turning point for the U.S. international trade agenda. The Canada-U.S. Free Trade Agreement (CUFTA, in effect 1989), the North American Free Trade Agreement (NAFTA, 1994), and the Uruguay Round Agreement (1996), which transformed the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO), collectively reduced the importance of tariffs and investment restrictions as barriers to trade. At roughly the same time, the application of information technology made possible an advanced and global logistics system that fostered the growth of global supply chains for industrial and other production. As a result, the longstanding model of firms concentrated in a single country and trading finished products with one another was gradually displaced by a new model, one where cross-border networks of firms, assisted by transnational commercial services, produced things together. A growing proportion of international trade after the 1990s was composed of intra-industry and even intra-firm trade.

This new structure of international co-production was vulnerable in two ways: transaction costs related to crossing borders, and regulatory differences that prevented identical components and finished products from being sold in multiple markets. Both border security and national and subnational regulation had existed for centuries, but the removal of tariffs and investment restrictions, combined with the improvement of global logistics, made these venerable functions of governments significant contributors to costs and competitiveness.

Over time, governments feared that these restrictions could lead firms to alter their investment strategies and reallocate production—and with it, jobs and economic activity. To a certain extent after the 1990s, the countries that offered the most favorable security and regulatory policies to business were in a position to attract more investment, jobs, and production. In this sense, countries were in competition with one another for a share in the global economy and its benefits, and the international trade agenda focused on making security and regulatory approaches supportive of the new model of international trade. Most often, but not always, the United States took a leading role in promoting global norms and standards that would allow it to remain the world's leading economy.

It is in this context that the current negotiations on border security cooperation by the U.S.-Canada Beyond the Border working group (BTB), along with the current bilateral talks on streamlining regulatory processes and standards by the U.S.-Canada Regulatory Cooperation Council (RCC), are properly understood. Both the BTB and the RCC are simply the most recent iterations of a conversation among the United States, Canada, and the other major economies of the world. At stake is the shape and extent of continuing participation by our two countries in global economic activity.

Will these talks work to bring the two countries closer together, and will they advance the national interests of Canadians and Americans? Twenty-three years after CUFTA and 18 years after NAFTA, the series of attempts by the United States to engage Canada and Mexico in security and regulatory cooperation has accomplished very little. Yet it is significant that leaders of these

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countries have persisted in such efforts despite difficulties and intervening events. The importance of this agenda for the competitiveness of both the U.S. and the North American economies is accepted on a bipartisan basis in the United States, despite the critics in both parties who have been alienated by misperceptions of the various structures needed to pursue this agenda.

It is therefore probable that whether Barack Obama is re-elected or replaced by Mitt Romney after November 2012, this agenda will continue to dominate relations between the United States and its neighbors. Given the legacy of past efforts, the ultimate success of the U.S.-Canada BTB and RCC Action Plans—whether they continue and perhaps make progress where previous efforts have failed—will depend on how well these initiatives address six issues that have confronted every similar attempt to date: inclusivity, exclusivity, reciprocity, replicability, portability, and expediency.

INCLUSIVITY

The Chrétien government in Canada had the right idea when, to balance its campaign against implementation of the Section 110 requirement for entry-exit record keeping contained in the U.S. *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, it reached out to stakeholders in boardrooms and nearby towns on both sides of the border and opened up a dialogue with civil society groups ranging from environmentalists to labor unions. This diplomatic effort resulted in several initiatives: the Shared Border Accord of 1995 (which set out mutual commitment to the principles of security cooperation and trade facilitation) was followed by the Border Vision Initiative of 1997 (which added a mutual commitment to infrastructure modernization and new technology), the Cross-Border Crime Forum of 1997 (which introduced the concept of Integrated Border Enforcement Teams, essentially joint law-enforcement task forces of the sort used in the United States to coordinate federal, state, and local police forces but now binational), and the Canada-U.S. Partnership of 1999 and 2000 (which was intended to rally stakeholders in border communities). The result—a new coalition for change and many new ideas for how to improve border operations—formed the basis for the U.S.-Canada Smart Border Declaration and Action Plan signed in December 2001. It allowed Canada to engage the U.S. government constructively to improve border security in the aftermath of the September 11, 2001, terrorist attacks.

Subsequent efforts to address border and regulatory cooperation have lacked this foundation. As talks became further removed from border communities and citizens, their legitimacy in the eyes of many voters fell and progress became more difficult. This dynamic fatally undermined the Security and Prosperity Partnership (SPP), introduced by the George W. Bush administration, which was the primary vehicle for security and regulatory cooperation in North America from 2005 to 2009. Over time, critics' charges about the supposed hidden agendas of the SPP became the accepted views for many citizens.

Regardless, business, civil society, and state governments repeatedly expressed interest in the SPP and support for some of its objectives. The BTB and the RCC have sought to garner this interest through outreach, soliciting ideas for future years, and partnering with communities on local pilot projects. Customs port directors have been instructed to engage with their local communities, and regulators have been told to reach out to industry groups and interested NGOs. Although these initiatives certainly signal an improvement in the BTB and RCC models over previous efforts, this outreach and engagement must be sustained if they are to achieve success, and they will soon need to show tangible results.

EXCLUSIVITY

The Obama administration has followed the Bush administration's policy during the SPP period, excluding the Congress from a formal role in border and regulatory cooperation talks with Canada and other countries. With the Congress wracked by partisan division, there is good reason to be pessimistic about the potential for it to participate in a constructive manner. Yet this exclusion weakens the prospects for these talks and could ultimately undermine them completely.

The U.S. Congress can affect the BTB and the RCC in three ways: budget, statute, and oversight. First, Congress approves the budget and determines which projects and initiatives will receive funding. On a provisional basis, the engagement of U.S. civil servants in these talks can be funded out of existing resources, but officials have other responsibilities and their time is finite. In addition, the U.S. fiscal situation is terrible, marked by repeated congressional votes over the past year to raise the debt limit for the U.S. government and an ongoing debate over tax cuts. All departments and agencies face the likelihood of future budget cuts, which inevitably will force choices about which activities can be sustained as resources shrink. Key to the BTB and the RCC are pilot and demonstration projects to be undertaken on a small-scale, local basis before those which prove successful are widely adopted. Funding for these efforts will become more difficult to secure, and the funding for extending them to other localities will be even more difficult if they are limited to each department's existing resources. Sooner or later, the Congress will constrain or empower the U.S. executive branch to pursue the BTB and the RCC.

Second, many of the duplicative U.S. regulations and security policies that most frustrate Canadians have their origins in Congress, from Section 110 changes to the Western Hemisphere Travel Initiative. Congress decides which border crossings, airports, and seaports get infrastructure, personnel, and technology upgrades. When it comes to regulation, Congress determines whether the Food and Drug Administration or the Department of Agriculture inspects certain products, and whether the Department of Energy or the Environmental Protection Agency has jurisdiction over renewable energy standards. If BTB and RCC talks make progress, they will inevitably run into problems that are congressional in origin and cannot be resolved without Congress. When the Office of the United States Trade Representative (USTR) was established in 1962 to replace the State Department as the leading U.S. negotiator for international trade agreements, the transfer recognized the fact that Congress has constitutional authority over tariffs and that no treaty negotiated without congressional consultation would win Senate ratification. The USTR, or an entity like it, should now be authorized to pursue border and regulatory cooperation agreements—but until that is done, the BTB and the RCC are at risk of conflict with Congress.

RECIPROCITY

In the United States, border security and regulatory reform are domestic policy topics and have been the subjects of presidential initiatives in most recent administrations. The policymaking dynamics of these talks are relevant to the prospects of negotiating changes with a foreign partner because they make it more difficult for the United States to offer concessions.

By constitutional design, the U.S. government is built on competition. Within the executive branch, this rivalry is expressed by departments that jockey with one another over jurisdiction and budget; within each department, a similar competition occurs among bureaus, offices, and agencies. To an outsider, this system produces odd results. Why is the National Oceanic and Atmospheric Administration part of the Department of Commerce rather than the Department of the Interior? Why is the Department of Veterans Affairs running a network of hospitals separate from the Department of Health and Human Services? In all such cases, the results stem from policy battles won and lost within a previous administration. There are no firm rules against overlap, turf swapping, or encroachment, or even the sudden creation or dissolution of an entire department of the U.S. government. If an office gives up something, another rival might take it up—along with the resources previously associated with that function.

Through a process economists have labeled "regulatory capture," the U.S. government departments and agencies responsible for regulation and inspection both at the border and across the U.S. economy have developed close relationships with powerful lobby groups and NGOs that participate actively in rule making and in shaping government enforcement practices. Attempts to alter the way that something is regulated or inspected frequently trigger countervailing pressures from these groups.

Eventually, the BTB and the RCC will run into these policy dynamics by requesting the United States to stop doing something that is hurting trade. The agency responsible for the particular area will have to consider whether, if it gives up the activity, it will get anything in return. If nothing, or if it loses something, it would consider how long it could stall in the hope of being rescued by a new president or by Congress. In addition, it would weigh whether the affected interest groups, who command more campaign donations and votes than foreign interests, would work against the change, seeking to reinstate a rule or practice—perhaps by having responsibility for this area reassigned to another department or agency over which it can have influence.

In contrast, any concessions offered by Canada through the BTB or the RCC will be graciously accepted. Should

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Canada agree to share particular data, for example, the U.S. department or agency involved stands to gain in the internal competition over policy within the U.S. government because, armed with Canadian data and/or cooperation, it has something its rivals lack. This advantage might secure resources or expanded responsibilities; the particular department or agency could well be designated as the policy lead actor within the U.S. government for a particular area. It is only when Canada seeks some concession in return that it will encounter reluctance and excuses from the U.S. side. Without greater reciprocity, the BTB and the RCC could become largely one-way processes that lead to Canadian convergence on extant U.S. standards and practices—an outcome that may become difficult for Canadian governments to sustain politically.

REPLICABILITY

Security officials are cautious by nature, and U.S. regulators, nervous about the political support for regulatory changes negotiated with foreign partners, have been similarly circumspect since the NAFTA ratification debate and the outcry over the SPP. This attitude has shaped the BTB and the RCC in two ways: the focus of both efforts on "low-hanging fruit" agenda items, and the emphasis on pilot projects as a prerequisite for larger changes.

Low-hanging fruit is a favored Washington metaphor for gains that can be harvested with little effort. Although such opportunities may be limited, negotiators hope that early success will build support and momentum for progress on objectives that are more difficult to reach. Since NAFTA, such easy items have filled the agendas of the serial efforts at border and regulatory cooperation, reflecting the difficulty of making gains as well as the limited ambitions of the negotiators, particularly when confronted by public or political resistance. If momentum for more difficult issues has not been attained before the current list is accomplished, the BTB and the RCC could stall.

The heavy reliance on small-scale demonstrations and pilot projects in the BTB and the RCC limits the impact that either initiative can have without expanding the best practices derived from these experiments. In a sense, like low-hanging fruit, these trial changes can be undertaken with few larger consequences until the point where the experiment is deemed a success and its innovation becomes a standard practice or is replicated elsewhere.

For lack of funding or political support, U.S. government participants in a pilot project have but two options: to ask that it be continued to gather more data before proceeding, or delayed or scaled back during the implementation phase. Despite the already limited ambition expended on these objectives and projects, there is always the danger that these efforts might succumb even further to caution. This nervousness is a key vulnerability for both the BTB and the RCC, and, moreover, one that is more pronounced than in previous negotiations on border and regulatory cooperation.

PORTABILITY

Notwithstanding the Harper government's preference for "re-bilateralization," the United States has viewed negotiations with its neighbors in a global context. Even NAFTA was pursued by the United States in light of the progress of European integration and the Uruguay Round of the GATT talks. Breakthroughs on energy, investment, services, and dispute resolution pioneered in CUFTA were used by U.S. negotiators as models for NAFTA and the World Trade Organization. After September 11, 2001, the U.S. and Canadian governments agreed to pilot the Container Security Initiative—to inspect shipping containers jointly in each other's ports—and the United States quickly began talks with other major partners in Europe and Asia to adopt similar practices. NEXUS, the U.S.-Canada trusted traveler program, was replicated for Mexico as SENTRI and also gave the impetus to Global Entry, a program for U.S. citizens and permanent residents traveling anywhere in the world.

Already the United States has linked its negotiations with Canada on clean energy, border security, and regulatory cooperation with parallel bilateral talks with Mexico. It has also incorporated these themes in the Trans-Pacific Partnership negotiations, in Transatlantic Partnership talks, and in the Pathways to Prosperity in the Americas initiative with several Latin American and Caribbean partners.

To the extent that Canada is seeking not just to resolve its U.S.-market access problems through the BTB and the RCC but also to gain an advantage over other U.S. trading partners such as Mexico, the U.S. practice of taking ideas that work with one partner and applying them to other partners will undercut the exclusiveness of any Canadian gains, even as it standardizes U.S. procedures and practices with as many foreign partners as possible. At the same time, the United States will use concessions by other trading partners to pressure Canada to adopt them as well. The bilateral structure of the BTB and the RCC does not provide any protection from U.S. promiscuity in pursuit of security and regulatory cooperation globally.

For the United States, these concurrent negotiations compete with one another to provide benefits to the national interest, and the portability of any new approach is an important consideration. Solving a unique local problem is less urgent than setting a new global standard or developing a new concept that can transform the handling of a larger volume of inspections or regulatory transactions. For the U.S. regulators and security officials participating in the BTB and the RCC with Canada, then, the stakes are high for any potential change. Canada is not likely to remain a special exemption for long, and concessions requested by Canada on the grounds of the unique friendship between the two countries will not necessarily be viewed as modest changes by the U.S. side. Even where a proposed change is logical and may seem inevitable—such as the development of common forms or a protocol for sharing data that each country keeps in a similar manner—the portability issue will give U.S. officials a reason to delay, either to forestall the change or to hope that a more advantageous arrangement can be achieved with another partner and used as a model for Canada later.

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EXPEDIENCY

An additional challenge for the BTB and the RCC in 2012 is that Washington has been preoccupied with the upcoming November elections. That has meant waning presidential attention and a closing window of opportunity for meaningful accomplishment until the election is over.

Ever since the launch of the BTB and the RCC, Canada seems to have assumed that the U.S. governmental process is fundamentally similar to that at home: when the chief executive and head of government has committed to change in Canada, the bureaucracy is bound to follow, despite any policy objections or institutional reluctance. But the United States does not operate that way: here, dissenting civil servants must be harried by political appointees to move forward on issues they object to, and both time and the electoral cycles of U.S. politics favor the tenured civil servant who can delay action in numerous ways. When an election approaches, much of the U.S. president's time is taken up by campaigning and fundraising, and many of the most talented political appointees in the administration leave government to join in the campaign or to take lucrative private sector positions. This distraction makes progress on domestic or international initiatives increasingly difficult.

In the shadow of the 2012 election, what can the BTB and the RCC hope to accomplish? At best, they will make limited gains on easy goals, gather data on promising new ideas being tested in pilot projects, and advance discussions on trickier issues. Yet they may also prepare the ground for a burst of accomplishment following the election if President Obama is re-elected. In the event that he is not, the bipartisan consensus favoring border and regulatory cooperation with U.S. foreign partners and to promote the competitiveness of the U.S. and North American economies will eventually bring a Romney administration to the table. At that point, the BTB and the RCC will likely be renamed and relaunched, but the substance of the agenda will remain the same. Even tentative progress achieved by the BTB and the RCC will be the basis for gains after 2012.

LOOKING FORWARD

Perhaps the greatest potential accomplishment of the BTB and the RCC would be to offer the governments of Canada and the United States further lessons on how to structure future initiatives to promote greater cooperation toward the larger goal of NAFTA: a single North American market for goods and services that can compete with a rising China, a revived Europe, and other global economies.

These two bilateral initiatives face long odds, but they are part of a larger agenda of global economic liberalization in the 21st century. As such, Canada and the United States will return to discuss their substance, spread their accomplishments as best practices with other partners, and study why they failed to achieve more—long after most Canadians and Americans have forgotten what BTB and RCC stood for and how they came about.

Laura Dawson

THE CANADA-U.S. BORDER ACTION PLAN: THIS TIME IT'S FOR REAL, CHARLIE BROWN

It has been a long time since Canada-U.S. watchers have had a big deal to consider. The 1989 Canada–United States Free Trade Agreement was one. The 2012 Beyond the Border Action Plan (BTB) may be another, but it's a long shot.[1]

In January 2012, a joint stakeholders meeting was hosted by the U.S. Chamber of Commerce in Washington in the Hall of Flags—the baronial splendor of the hall was fitting for the gathering of the clans taking place within. The standing-room-only crowd represented dozens of economic sectors and government departments in both countries and hundreds of disparate interests, most searching for a framework for change.

The paint is still wet on the border plan, but expectations are running high. The agreement could be torpedoed by many things: the absence of a clearly defined legal basis for the agreement, a U.S. domestic crisis that is provoking instincts to close markets, economic paralysis in the EU, a fixation on Asia and emerging markets that leave Canada as an afterthought, and a U.S. election that is focused exclusively on domestic issues. Despite the cards stacked against the BTB, both sides are starting to see a faint glimmer of hope. This idea just might work.

The U.S. speakers at the Chamber of Commerce gave a strong opening to the 250 assembled stakeholders. Cass Sunstein, until recently the White House wunderkind and administrator of the Office of Information and Regulatory Affairs, assured the audience that political attention was being paid at the highest levels. Alan Bersin, the assistant secretary of international affairs at the Department of Homeland Security, likened the border plan to a reconciliation of the War of 1812. And David Heyman, the assistant secretary for policy at the Department of Homeland Security, compared the border perimeter approach to NORAD—a big idea with a huge capacity for transformation.

The Canadians, as is their nature, were more sanguine about prospects for a new border security and prosperity agreement with the United States. Still, many at the Chamber event were starting to get that Charlie Brown look—the one that says they know Lucy is going to pull the ball away, but the chance of one glorious kick is just too good not to take a chance.

WHY DO WE NEED IT?

When our leaders signed the first U.S.–Canada free trade agreement more than 20 years ago, they imagined a hassle-free border where businesses on both sides could take advantage of the best available resources, know-how, and markets and generate cost savings through just-in-time production. Since then, ramped-up security, eroding infrastructure, and too much red tape have forced businesses to shift to just-in-case production. They routinely double order and stockpile expensive inventory to hedge against border bottlenecks.

Border delays between the United States and Canada add about $800 to the price of every new vehicle manufactured in North America. A car manufactured in Korea or Japan clears customs only once when it arrives at a U.S. port, but a North American car is subject to fees and inspections at least seven times as it crosses between the United States and Canada (and increasingly Mexico) in

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different stages of production. Economists estimate that up to 10 percent of the cost of a North American product goes to pay for border and trade inefficiencies on the U.S. border with Canada.[2]

The advantage created in 1994 by integrating U.S., Mexican, and Canadian manufacturing under the North American Free Trade Agreement (NAFTA) has been lost to layers of regulatory duplication. For many in the United States, NAFTA is old news and Canada is perceived as a sort of a reliable upper Minnesota. People know it's there, but the absence of crisis means it is out of mind. All eyes are turned to China,[3] but this fixation is premature. Even though U.S. exports to China have tripled over the past decade, they account for only 7 percent of America's total exports. Canada buys nearly three times as many U.S. goods as China does. Canada is the top export destination for 34 U.S. states,[4] and an estimated 8 million American jobs (4.4 percent of total U.S. employment) depend on trade with Canada.[5]

WHAT IS IT?

The new U.S.-Canada Beyond the Border Action Plan and the related Regulatory Cooperation Council attempt to reverse the decline of North American competitiveness by creating a border that is not only safe but smart. The plan, released in December 2011, contains defined actions tied to specified deadlines, including

- pilot programs that will allow cargo to be pre-screened on the factory floor;
- harmonized procedures for data collection and administration;
- single shipping windows in the United States and Canada which are also "smart" enough to talk to each other;
- trusted-trader programs that are accessible to small-business exporters;
- faster and more predictable crossings for business travelers;
- easier movement for technicians who provide after-sales service;
- better traffic management approaching, and at, the border, including road signs with real-time information on border wait times; and
- improved information-sharing and identity verification so that people engaged in legitimate trade and travel reach their destinations sooner.

The immediate prospects for the initiative look good. The initial work plan captures irritants that Canadian and American officials have been complaining about for years but have lacked the political attention to fix. The real challenge is whether the agreement can move beyond short-term political deliverables to provide a framework for long-term change. To do so, the two governments will have to create new instruments for legal, institutional, and political cooperation which have historically been out of reach in Canada–U.S. relations because of their potential effects on policy, sovereignty, and domestic control.

Lessons learned from past history can improve prospects for success as long as we avoid falling into the same traps. But as with any close relationship, the sources of our strength can also be the qualities that undermine us. These double-edged dynamics, discussed below, include the legacy of the special relationship, an uneven view held by Canadians and Americans of the importance of the agreement, and the linkage with U.S. allies who are most likely to share Canadian interests.

THE PITFALLS OF THE SPECIAL RELATIONSHIP

For Canada, the concept of the special bilateral relationship between two like-minded allies is a defining characteristic of our engagement with the United States. It is a dynamic that Canada seeks to replicate whenever possible. The trilateralism of NAFTA was only grudgingly accepted as an alternative to being shut out of U.S. bilateral talks with Mexico.[6] Nostalgia for this relationship undermines Canadian interests whenever Canada's desire to be special competes with pragmatism and recognition that, as the world's largest economy, the United States often gets what it wants at the bargaining table.

Through the BTB, Canada gets the one-on-one attention it craves. It is also true that Canada can often progress faster with the United States alone than with Mexico in the room, when different levels of development and different border priorities change the tenor of the discussions. Without the weight Mexico can provide, however, Canada lacks the influence to counter American proposals it does not agree with. Returning to the dynamics of Charlie Brown and Lucy, Canada cares far too much

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about the special relationship. It gives away the leverage that its importance to United States should bring precisely because it wants too much to be loved. The United States knows that Canada will never walk away from the table.

Despite the Canadian impulse to guard the bilateral relationship, Canada's interests are not well served by keeping its security and prosperity partnership with the United States as an exclusive club. Canada has growing trade interests around the world. As relevant elements of the BTB are applied in more economic spheres (North America, South and Central America, Asia, and the European Union), Canada will increasingly benefit as one of the architects of the agreement.[7]

CULTIVATING ALLIANCES

The Security and Prosperity Partnership of North America (SPP) negotiated in 2005 among Canada, Mexico, and the United States is dead, and NAFTA, while effective in governing traditional trade issues (tariffs, rules of origin, customs classification, and the like), has reached the limits of its usefulness as an instrument of North American economic governance or as a platform from which to build future competitiveness. NAFTA lacks an effective mechanism to amend or update the agreement because its framers avoided any commitments that would cede domestic economic authority to a supranational decision-making process. As a result, unlike the European Union, NAFTA is a tool of economic integration that contains few mechanisms for institutional or political integration.

The BTB may help to provide the framework to bring the out-of-date NAFTA provisions into the 21st century. If the BTB is to avoid a similar short shelf life, however,

If Canada is willing to do the staff work required to draft technical proposals that are sensitive to the interests of both sides, the result might be an agreement that achieves both security and prosperity goals.

it must make powerful friends in Congress who accept that, for North America to be competitive in the global economy, it needs to allow additional trading partners into the inner circle of U.S. rule making.

Political support is the first step to moving the BTB forward, but commitment at the working level—in departments and agencies with trade, economic, and security responsibilities—is key to creating an agreement that delivers results for cross-border trade and travel. The Department of Homeland Security (DHS) is the lead player in the interagency process in the United States. This leadership is helpful for Canada because it ties its interests to a powerful entity able to mobilize the political and fiscal resources necessary to keep BTB afloat within the competitive U.S. interagency process. At the same time, DHS control skews the content of the agreement toward security concerns.

Canada may be able to hold the focus on economic objectives somewhat by taking advantage of the fact that U.S. officials never have enough time or resources to devote to policy analysis. If Canada is willing to do the staff work required to draft technical proposals that are sensitive to the interests of both sides, the result might be an agreement that achieves both security and prosperity goals.

In addition to support from politicians and officials, it is local stakeholder support that determines whether an initiative has the momentum to make it across the goal line. Phase one of the BTB Action Plan makes a commitment that stakeholders living in border communities will be involved in planning access at the various ports. That is a good start, but it's not enough. Business must also be convinced of the benefits of the agreement and persuaded to remain on board for the long haul. State and provincial stakeholders must be brought to the table as full participants.

There are both practical and political imperatives for including participants at the regional and local level in the negotiations. For instance, regulatory convergence is a key component of the BTB, and much of the regulatory world is under state/provincial and municipal control. In Canada, the provinces have a constitutional right to participate in the decisions that affect trans-border and international trade. Although provincial assent is not strictly necessary before the federal government can undertake new trade commitments, provincial opposition is sure to guarantee their failure.[8] In the United States, in contrast, local interests have a preponderant influence on Congressional behavior. In other words, Canada influences Washington not from inside the Beltway but from Bellingham and Buffalo.

MANAGING EXPECTATIONS

With a majority since 2011, the Harper government now has more to fear from political opposition (or indifference) in the United States than from criticism at home. The promise of a faster, easier border for tourism and trade plays well with most Canadian voters, and the challenge for Canada is how to manage expectations. If the first phase of the action plan does not deliver tangible improvements, this failure will lend credence to criticism that the agreement lacks substance. It also opens the door for critics to play up bogeyman threats of lost sovereignty, compromised rights and privacy, and the creeping Americanization of Canada.

Canada is more concerned about how to maintain U.S. political attention through and beyond the presidential election. In the heat of the campaign, the rhetoric about the evils and virtues of foreign trade escalates. It is a debate in which Canada has no direct voice and in which it can participate only by proxy through interested

On December 7, 2011, President Barack Obama and Prime Minister Stephen Harper unveiled the the Beyond the Border (BTB) Action Plan and the Regulatory Cooperation Council (RCC) Action Plan.

and like-minded business allies. Canada must therefore be focusing outreach campaigns on U.S. businesses that benefit from expedited trade with its northern neighbors.

To create an agreement that is durable and provides lasting benefits, Canada's challenge is one of complex event management.

- Canada must overcome its attachment to the bilateral special relationship and be prepared to expand the agreement to other trading partners whenever and wherever that makes sense. With the United States as a drawing card, Canada becomes a more attractive country to do business with because of the size of the North American market. Furthermore, by expanding and constantly updating the BTB, it remains a living and relevant agreement. As such, it will avoid the ossification experienced by NAFTA.
- Canada must recognize that DHS leadership is a double-edged sword. By taking charge of the staff work that DHS lacks the interest or capacity to do, Canada can help to keep its economic interests intact, even as it must accept that the DHS will always make security interests paramount.
- Canada must be engaged in a sustained and persuasive advocacy campaign with U.S. domestic actors with whom it shares commercial or political interests. Congressional representatives will give a polite hearing to Canadian officials who make the case for the BTB, but they are more likely to act when those interests are relayed to them through U.S. businesses and voters.
- Finally, while making the agreement appear as important as possible south of the border, Canada must resist the urge to do the same at home. Although it is tempting to get as much traction as possible from Harper-Obama summits, the Canadian government must tone down the rhetoric of the "big deal" so that results do not fall short of the expectations of average Canadians.

CONCLUSION

Every child who has ever read a *Peanuts* comic strip can appreciate Charlie Brown's problem: Lucy does not respect him. She knows that he will fall for her blandishments every single time. With the Beyond the Border Action Plan, Canada succeeded in gaining the attention of the United States for one afternoon on Lafayette Square, but it will not have the respect to ensure that the ball stays in place until the kick can be completed.

Should Canada feign indifference? To play hard to get when this agreement clearly offers so much to Canada's economic bottom line would not be seen as credible. The American Lucy is smart enough to see through that. However, Charlie Brown's assets are always strongest in a group setting. He is reasonable, likeable, and inspires a level of trust in Linus, Snoopy, and Peppermint Patty that Lucy could never hope for. If Canada wants to level the playing field with the United States, it should immediately extend the size of the BTB negotiating field to like-minded states in the hemisphere and expand the mandate from fixing the northern border to one of building hemispheric competitiveness vis-à-vis Asia and emerging markets. A North American negotiating bloc in the Trans-Pacific Partnership is an ideal starting point. Yes, progress will be slower, but Canada's negotiating power will be strengthened, and the results will provide a solid foundation for future growth and expansion.

NOTES

1. The name of the initiative is technically Beyond the Border: Perimeter Security and Economic Competitiveness Action Plan, but those involved call it either the Border Action Plan or the Beyond the Border Action Plan.
2. Robert A. Pastor, *The North American Idea: A Vision of a Continental Future* (New York: Oxford University Press, 2011), 136.
3. Hillary Clinton, "America's Pacific Century," *Foreign Policy* (November 2011), <www.foreignpolicy.com/articles/2011/10/11/americas_pacific_century>.
4. Department of Foreign Affairs and International Trade Canada, <www.actionplan.gc.ca/eng/feature.asp?mode=preview&pageId=391>.
5. Laura Baughman and J. François, "U.S.–Canada Trade and U.S. State-Level Production and Employment," paper prepared for the Embassy of Canada, March 2010.
6. For many Canadians, the "real" agreement has always been the 1989 Canada–United States Free Trade Agreement, and NAFTA is simply CUFTA plus one.
7. States derive competitiveness gains by being among the creators of new trade arrangements rather than having to bear the costs of adapting to new regimes created by others.
8. Under the federal-provincial division of powers, the federal government has constitutional authority over the negotiation of foreign trade agreements, but the provinces have authority over numerous economic areas covered by trade agreements—natural resources, for example, and banking and other services.

CHRISTOPHER SANDS RESPONDS TO LAURA DAWSON

Laura Dawson compares the hesitation of Canadians to embrace the work of the Beyond the Border (BTB) negotiating group and the U.S.-Canada Regulatory Cooperation Council (RCC) to Charlie Brown, wracked with doubt as to whether the American Lucy will once again pull the football away before he can kick it, leaving him flat on his back and feeling foolish. In the *Peanuts* comic strip, Charlie also encounters Lucy at a booth where she offers "Psychiatric Advice" for five cents. The Canadian Charlie Brown that Dawson described is full of anxiety about the pitfalls of the special relationship, the necessity of cultivating alliances, and the burden of managing expectations. I imagine that the American Lucy would respond (crabbily) to each of these complaints in turn.

PITFALLS OF THE SPECIAL RELATIONSHIP

An exclusive bilateral special relationship between Canada and the United States is simply not attainable. The United States isn't interested in that kind of relationship. Rather, it wants the innovative solutions and breakthroughs on security and regulatory cooperation it has developed with Canada to be portable, applied across the broad spectrum of its international partners, and, where possible, established as global norms for commerce and defense.

Dawson identifies Canadian nostalgia for the "special relationship" of the past, but that relationship has been romanticized to the point where many Canadians are looking for a past that never existed. They have blinded themselves to the unreciprocated nature of bilateral regulatory cooperation. Canada can make concessions to the United States in the context of BTB and RCC, but U.S. regulators and security officials find it hard to make unique concessions to Canada.

It is important for Canadians to be aware that the United States is at the center of a series of multilateral talks that are intended to reshape the governance of trans-boundary commerce and the movement of goods, people, and ideas. You have a seat at the table waiting for you, Canada, now that you have been welcomed into the Trans-Pacific Partnership; you could join the ongoing U.S. talks with Europe and transform the bilateral discussions on border and regulatory cooperation into continental talks that include Mexico.

CULTIVATING ALLIANCES

For many Canadians, the U.S. Congress and the tightly woven network of special-interest lobbyists in Washington are the enemy. No matter what Canadians do to avoid the legislative labyrinth, it seems they are always caught up in U.S. domestic politics, whether softwood lumber, the Western Hemisphere Travel Initiative, mandatory country-of-origin labeling for beef and pork, or "Buy American" provisions in U.S. stimulus-spending legislation.

Dawson wisely counsels Canadians to steel their courage and engage Congress and U.S. special interests directly. Forging alliances within the United States and aggregating U.S. and Canadian domestic interests in order to make greater progress possible at the bargaining table is not traditional diplomacy, but Canada has done so before—and performed well. Rather than avoid these entanglements, Canada should see them as an inevitable part of doing business with the Americans.

An exclusive bilateral special relationship between Canada and the United States is simply not attainable. The United States isn't interested in that kind of relationship.

Canada should also insist that the Obama administration give it stronger support. The U.S. executive branch has been even more wary of congressional engagement than have Canadian negotiators, who have at least reached out to brief congressional committee staff and engage congressional offices. While Canadian diplomats have found friends among industry associations and community leaders, the outreach from the White House has been nothing short of underwhelming.

MANAGING EXPECTATIONS

Often Canada has been unrealistic in its expectations for a special bilateral relationship with the United States, and Dawson sees a similar dynamic at work in the BTB and RCC talks. The Conservative majority government of Prime Minister Stephen Harper is expected to deliver a big deal with the United States, but the prospects for a historic breakthrough are hindered by a poor U.S. economy and the distractions of the U.S. election cycle. The flat economy has led U.S. negotiators to focus on "low-hanging fruit"—minor regulations and easy fixes to security policies such as expanding voluntary participation in trusted traveler and shipper programs. The approach of the 2012 U.S. elections has led the two governments to keep the talks at a low profile for now.

Soon enough, 2013 will arrive and, regardless of the outcome of the U.S. elections, a returned President Obama or a newly elected President Romney will provide an opportunity to accelerate progress on border security and regulatory cooperation. In this sense, Canada's optimism is well founded: it will have the chance to press a more ambitious vision with Washington.

Canada should be careful not to tamp down public expectations too low.

Will Canada be ready? Dawson advises modesty and persistence in the face of adverse U.S. political and economic conditions. This caution is valid in the short term, but Canadians should remember that the beginning of a new presidential mandate is usually the best time to pursue big agenda items—before a second-term president becomes a lame duck, or a first-term president begins to worry about re-election. Canada should be careful not to tamp down public expectations too low.

In the end, Laura Dawson encourages Canadians to be ambitious and to accept slower progress with the United States, in the context of multilateral talks, in exchange for the greater scale of potential gains from having more countries at the table—in effect, to join the United States in reshaping the global economy rather than trying to improve only the North American corner of it. That is good advice, and worth more than five cents. To make the most of this opportunity, Canada must face the world less like Charlie Brown and more like Snoopy.

2

LAURA DAWSON RESPONDS TO CHRISTOPHER SANDS

Christopher Sands's excellent essay is a warning to Canadians (and other U.S. trading partners) about the core difficulty in any attempt to build new and formal cooperative arrangements with the United States. Canada has long benefited from strong informal ties with its southern neighbor. Typically, one official will pick up the phone to speak to a counterpart colleague across the border about a matter of shared concern. As long as no new laws are required, the matter can usually be handled at the official level without any need for political intervention. This scenario happens every day. The deeper economic integration involved in the Beyond the Border negotiations and the U.S.-Canada Regulatory Cooperation Council, however, requires formal legal mechanisms, and Canada must exercise patience and flexibility in order to get what it wants from the process. As the first step, the government should carefully manage domestic expectations for concrete progress in the short term.

In terms of the complexity of its rules and regulations, Canada can well match the United States. The difference between them comes at the practical level of making legislative changes, where the twists and turns of Congressional influence make Canada's parliamentary process seem easy. In the United States, in contrast to Canada, the support of the executive is no guarantee of success. Congress, as Sands points out, will ultimately determine whether the regulatory and border deals with Canada live or die. With the responsibility for border issues fragmented among several different departments, and no one department, bureau, or agency tasked with the role of champion, it is easy for Canadian interests to fall through the cracks.

Canada must exercise patience and flexibility in order to get what it wants from the process. As the first step, the government should carefully manage domestic expectations for concrete progress in the short term.

Sands also reminds us that the attention of U.S. officials is being pulled in many directions as the election approaches. The government has few resources right now to devote to amending the status quo with its safe and predictable northern neighbor. Canada must set the bar low for the short term and focus, as he says, on creating the conditions to "promote greater cooperation toward the larger goal of NAFTA: a single North American market for goods and services that can compete with a rising China, a revived Europe, and other global economies." Even small changes in the world's largest economy can make a big difference to the prosperity of the trading partner next door. With strong domestic support and a majority government in Parliament, Canada is the more nimble partner in these negotiations. It is also the partner for whom the agreement is more important, given that a deal will affect a relatively larger share of Canada's economic activities.

Canada has an incentive to take the lead in researching new options, reaching out to stakeholders, developing new proposals, and making the case for benefits for both sides. Although Canadians do not vote in U.S. elections, they are skilled at building coalitions with U.S. partners who are willing to mobilize votes and influence when persuaded that their interests are shared with those of Canada. Even legislators who are suspicious of foreign trade are recognizing the need to reduce red tape, along with the fact that billions of dollars are being wasted on duplicate regulation and on regulatory capture—the domination of regulatory agencies by special interests or sectors.

The U.S. northern border communities are an important source of potential support. These regions have not only been hardest hit by changes to the manufacturing industry and by the recent economic downturn but stand to benefit most from improved access to Canada and from reduced border transaction costs. The U.S. Department of Commerce estimates in its trade factsheet that only 1 percent of U.S. businesses exports their products. For those that do, Canada is their most likely first market. As the U.S. manufacturing and services sectors struggle to position themselves in the global economy, making trade with Canada easier seems a good place to begin. Congressional representatives from the border states must be convinced that long-term prosperity will be achieved not through narrow protectionism but by creating enabling conditions for well-functioning cross-border supply chains.

Canada is very good at doing the legwork required to create new forms of cooperative arrangements. This skill has long helped Canada to punch above its weight in international negotiations. During the Canada-U.S. Free Trade Agreement negotiations, veteran U.S. trade negotiator Bill Merkin commented that Canada knew the U.S. positions better than the Americans did themselves. His Canadian counterpart, Simon Reisman, later quipped: "We ought to, we wrote them." Now, by working to provide a range of innovative, forward-looking solutions that include a balance of benefits and obligations on both sides, Canada will be well prepared to take advantage of the post-election "burst of accomplishment" that Sands predicts may be in the offing.

Whatever the deal it makes with Canada, the United States will, as Sands predicts, certainly repackage the results it likes and then offer them to other trading partners. On this score, Canada has two choices: it can whinge about the erosion of the "special relationship" it thinks it has with the United States or it can anticipate this reality and find ways to exploit its advantage as an initiator in the new regime. If the Office of the United States Trade Representative wants to use elements of the regulatory cooperation deal in the Trans-Pacific Partnership, that's great. Canada will be ahead of other partners because its policies are already aligned with those of the United States. Canada is open for business while everyone else is scurrying around to make domestic reforms and adjustments.

Canada can also promote the results of the new U.S.-Canada agreements in its own negotiations with third countries such as Japan and the European Union. A U.S.-Canada approach has much more appeal than a unilateral Canadian proposal to countries that want eventually to negotiate their own free-trade agreements with the United States.

Another challenge in writing new rules is thinking through the long-term consequences of formal cooperation. For example, voluntary information sharing means that Canada can sidestep any request from U.S. authorities with which it is not comfortable. The obligation to share information means, however, that Canada must be aware in advance of any agreement of all the practical implications of how the United States could use that information, and it must ensure that the end use is consistent with Canadian laws and values.

Finally, Canada's forward-looking agility behooves it to work with Mexico on matters of common interest. Right now, the United States is negotiating with Canada and Mexico separately on regulatory cooperation and border matters.

In asymmetrical bargaining, when one partner significantly outweighs the other, the smaller partner is always at a disadvantage unless it can form a counterweight with like-minded allies. In order to counter the dual bilateral arrangement that the United States currently enjoys, Canada and Mexico need to find common cause on regulatory and border issues. If the United States is getting the same message from both of its border partners, the chances of compromise are increased because a broader range of U.S. political interests is engaged. As well, Canada-Mexico alignment on key hemispheric issues will increase the likelihood of productive trilateral discussions when and if they take place.

The negotiating conditions for the BTB and the RCC are far from optimal, and the final results will certainly fall short of the hype. Sands makes this case very well, though the final agreement should not be seen as a defeat. Rather, it is a blueprint for strategic action. Positioning these new arrangements, as part of a longer-term national and hemispheric competitiveness plan, will provide the best chance of shared prosperity and future growth.

About the Authors

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Christopher Sands is senior fellow at the Hudson Institute and director of the Hudson initiative on North American Competitiveness. He is currently the Ross Distinguished Visiting Professor of Canada–United States Business and Economic Relations at Western Washington University, on leave from his position as professorial lecturer in Canadian Studies at the Johns Hopkins University School of Advanced International Studies. He is the author of *The Canada Gambit: Will It Revive North America?* (Hudson Institute, 2011).

2

A specialist in U.S.-Canada economic relations, **Laura Dawson,** president of Dawson Strategic, provides advice to business on cross-border trade, market access, and regulatory issues. She was a public policy scholar at the Wilson Center, a senior fellow at the Macdonald-Laurier Institute, and a member of the International Economic Council of the CD Howe Institute. In previous years, she served as senior advisor on U.S.-Canada economic affairs at the United States Embassy in Ottawa, and she has also taught international trade, Canada-U.S. relations, and policy analysis at the Norman Paterson School of International Affairs at Carleton University.

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CANADA INSTITUTE
Woodrow Wilson International Center for Scholars
One Woodrow Wilson Plaza
1300 Pennsylvania Avenue, NW
Washington, DC 20004-3027
canada@wilsoncenter.org
T (202) 691-4301
F (202) 691-4001
WWW.WILSONCENTER.ORG/CANADA