



## A malign concept of sovereignty and a Canada-US customs union

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### Introduction

Since 9/11, the Canadian government has taken the Canada-US trade relationship for granted. Aside from some important security measures, there have been no initiatives to broaden, deepen, or safeguard Canada-US trade in the event of another terrorist attack. This is curious. US trade is essential to Canada's prosperity. A more difficult border, depending on the magnitude of difficulty, would degrade to devastate Canadians' standard of living. The gains from more secure trade, in particular a customs union, are strong, both for economic growth and as an insurance policy.

This note will first examine what often appears as a central argument against closer trade ties, fear of loss of sovereignty, albeit this concern is less prevalent in academic papers, but plays a large role in the media and among the public. I argue this is based on a malign concept of "sovereignty" and that, when malign implications are removed, sovereignty becomes neutral, a "referee" term in the debate. I then apply this to the case for a customs union with the United States.

### Protecting Canadian sovereignty

Only for brief periods in Europe was sovereignty expressed as "L'etat c'est moi". This is the near perfect idea of sovereignty, internally and externally. The state has the authority to manage the lives of its citizens and foreign relations. The expression of sovereignty is not limited by cumbersome rules, division of power, effective deliberative bodies, or independent power centres. The sovereign exercises unrestrained sovereignty.

The spectre of the loss of Canadian sovereignty has long been used to argue against closer trade with the United States. It was the key issue in the 1988 election over the Free Trade Agreement, and goes back at least to the National Policy of John A. Macdonald. Since 9/11, the protection of Canadian sovereignty has been a central argument against developing comprehensive trade/security agreements with the United States that would reduce the odds of another successful terrorist attack on the United States (and Canada) and, in the event of the attack, help protect our trade relationship from potentially catastrophic short-term – possibly even medium- or long-term – disruption.

In these discussions, national sovereignty is treated as intrinsically good. Even trade supporters view diminution of sovereignty as unfortunate. Harris (pg. 30), for instance,

discusses “costs that include a loss of sovereignty.” See also Lincoln (A report to the House of Commons) for a reflection of the view of sovereignty as intrinsically valuable or visit the websites of various anti-trade groups.

My argument is that sovereignty, at least in the context of a customs union,<sup>1</sup> has no intrinsic value and that a malign concept of sovereignty, which views state power as a “good thing”, is often found behind the rhetoric. A clear, if perhaps unconscious, statement of this could be found on the website of the Council of Canadians during its campaign against the Multinational Agreement on Investment. “Over the years, our national sovereignty has been diminished first by the *Charter of Rights*, then the FTA and NAFTA. But they all pale beside the coming MAI.” (Emphasis added.)

This views limitations on state powers, over its citizens or externally, as a reduction of sovereignty and a “bad thing”. This statement is no longer on the Council’s website, perhaps because the Court seems less inclined to use the Charter to broaden negative rights, in Isaiah Berlin’s sense (Berlin, 1958), which limit state power of the state, than to create “positive” rights, which, increase state power – or sovereignty in the sense above – since the state must develop the information and coercive mechanisms to gather additional resources and the power and bureaucracy to distribute them. (Seeman et al.)

Interestingly, the institutional expressions of “sovereignty” most valued by Canadian nationalists trample “negative” rights of Canadians. Two examples are the insistence on maintaining marketing boards, which limit property rights and the right to free exchange without the approval of the state or its agencies, and the ability of government and its agencies to limit the speech to which Canadians are allowed legal access in Canada. For instance, Fox News is banned from cable channels though cable broadcasters believe a significant number of Canadians would view it if allowed by government. The Canadian culture industry appears to be horrified that closer trade relations with the United States might permit individual Canadians to make free choices in the area of speech.

One of the great achievements of the past several hundred years in enlightened nations is the diminution of state sovereignty, particularly in the areas discussed in the preceding paragraph. No stable democracy has existed that is not a liberal democracy, which in effect creates a sphere of negative rights around individuals into which state sovereignty may not intrude.<sup>2</sup> Another great achievement has been the willingness of states to cede sovereignty externally, through treaties that reduce the possibility of war, open trade, and commit nations to human rights treaties, which if not perfect do have beneficial effects.

Curiously, the same groups that are horrified by a loss of sovereignty through closer trade ties typically favour environmental treaties, like Kyoto, and labour agreements, without

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<sup>1</sup> Without taking sides, let me note that a credible case can be made that some US security measures violate “negative” rights. In this case, Canada would not wish to compromise its laws, but even here the argument is not about Canadian sovereignty as an intrinsic good but rather about rights violations.

<sup>2</sup> Although property rights are not a constitutional right in Canada, they are well-established in common law and are essential and necessary for other freedoms and democracy. No stable democracy has ever existed that did not protect property rights. That they were deliberately excluded from our Charter says much about political power and structures in Canada

any concern over the loss of “sovereignty”. Such treaties increase state power internally, so those with the taste for a strong state may be appeased. It appeals to those who believe resources should be distributed “democratically”, which essentially means to the most politically powerful actors such as Quebec’s potent dairy lobby and Canada’s richly funded culture industry. In any event, it is curious to argue closer US trade ties are an attack on “sovereignty” and then demand heroic labour and environmental treaties.

Thus, I believe “sovereignty” arguments are too often based on a malign version of sovereignty, which believes state power both over its citizens and external affairs is intrinsically “good” and any reduction of state power is a regrettable reduction of sovereignty. More appropriately viewed, sovereignty is held in trust by the state for the good of its citizens. Here sovereignty is a neutral concept. It has no intrinsic value other than whether its use or its ceding creates benefits for the population while respecting their civil liberties. The state’s ceding of sovereignty over speech and property rights to individuals was not intrinsically bad because it reduced state power, nor would it be a “bad thing” if trade agreements increased Canadians negative rights.

### Sovereignty and a customs union

A customs union involves the creation of common tariffs/quotas and the elimination of rules of origin.<sup>3</sup> If sovereignty has no intrinsic value, as I have argued, and in some cases a negative value, the question about a customs union with the United States boils down to whether it benefits Canadians and expands or limits their individual rights.

#### Benefits

The state’s first duty is the physical and economic protection of its citizens. A customs union, with common rules, would enable Canada and the United States to establish a joint economic perimeter, in a way not possible now, policed by Canadian and US officials.

The United States is concerned about lax security in Canada, although this is primarily focused on immigration and refugee policies. This note discusses a customs union and the flow of goods, not of people. Nonetheless, a customs union would increase the US zone of comfort about international goods flowing through Canada to the extent that the US public and officials believe their border security measures are superior’s to Canada’s. If US perceptions are accurate, then the physical security of Canadians, as well as US citizens, is increased. If it is false, the perceptual benefit remains, as do real benefits.

If dangerous weapons or individuals were smuggled into Canada on board a container ship or in a plane’s cargo hold, the border would likely seize up whether the contraband was found in Canada, smuggled across the porous border, or, far worse, employed in a terrorist attack. However, if Canadian and US officials handled customs whether at Boston or Vancouver, the problem becomes mutual with less impact, at least over the medium- to long-term, on the flow of goods across the border.

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<sup>3</sup> Due to space constraints, this note has to be telegraphic on the shape of a customs union, but it is more fully discussed in Harris (2001), Weintraub (2004), and other citations to this note.

This is, at best, a partial insurance policy, which hardly covers every possibility, but it is not without value. Goldfarb and Robson estimate that \$141 billion in Canadian exports and 390,000 jobs are vulnerable to border disruptions and \$70 billion in exports and 200,000 jobs are indirectly vulnerable. In my view, this captures only the immediate value of activity at risk. Much of Canada's high-technology, high value-added industries are focused on the US market. Their importance to the Canadian economy, due to the externalities they generate in research, knowledge base, technology transfer, and human capital, go well beyond the immediate numbers. Moreover, much capital would be destroyed if border slowdowns forced a break up of the integrated industrial structures on the Canadian side of the border. Canadian exports to the United States represent about a third of the Canadian economy but little more than two per cent of the US economy. The United States would not face great disruption in replacing the portion of those goods from the integrated manufacturing complex. Canada also runs a trade surplus with the United States that has been over a \$100 billion annually since 2000, enabling us to buy goods Canadians value from the rest of the world.

The impact on investment, the economy's ability to generate jobs and prosperity in the future, could be devastating. Few would invest in Canada just to serve the Canadian market. Threats to the border's openness would put a risk premium on Canadian investment. This would not only reduce investment, it would require higher than average profits in Canada in effect to pay the risk premium, suppressing wages.

US political dynamics are becoming protectionist. (See Gabel et al.) So far, this has bypassed Canada, but, as the United States' largest trading partner, Canada is also the largest out-sourcer of "US" jobs. Any terrorist act with a Canadian connection could easily change the benign US attitude towards Canada unless US officials were fully culpable, as they would be at least in the case of international goods shipments with an extended customs union perimeter. Without this, fears of terrorism could stoke US protectionism, particularly if Canadian leaders and media reacted with the same sort of vicious anti-Americanism that became strikingly evident long before the Iraq war.

The above discussion centres on the "insurance" benefits of a customs union. The "positive" economic benefits have been discussed at length elsewhere. These advantages would "(1) reduce the administrative and efficiency costs of the rules of origin system (ROO) currently in place under NAFTA; (2) promote simplification of border procedures for both NAFTA produced goods, and non-NAFTA imports; and (3) promote more liberal external trade with non-NA partners if a common trade policy meant 'harmonizing down' to the lowest common external barrier." (Harris, 2004. See also Taylor, who estimates a \$10 billion saving just for simplified border procedures.) In particular, the economic literature suggests that the elimination of ROO promises significant benefits, as well as increasing Canada's trade links to the rest of the world, another positive.

The Fraser Institute's 2004 survey of non-tariff, non-quota barriers between Canada and the United States reveals that about two-thirds of Canadian exporters face such barriers and four-fifths believe they will increase in 2005. A customs union has the potential to reduce such barriers. (McMahon and Curtis, forthcoming)

### Costs

Even if protecting sovereignty is not an appropriate concern, other costs may accrue to Canadians in a customs union. The question becomes whether relevant costs outweigh relevant benefits. I argue that the long-term costs of a customs union are negligible and that many of the perceived costs are actually benefits. Given space limitations, this will be highly impressionistic overview.

Two contentious areas are culture and agriculture, particularly as concerns marketing boards. The evidence shows that when producers and consumers are considered, marketing boards lead to dead losses. This is hardly surprising. Marketing boards are monopolies, enforced by state power. No economically literate person would support a monopoly unless they are part of the rent-seeking circle in the monopoly.

The United States, itself, has plenty of agricultural distortions, though far less than Europe and somewhat less than Canada, despite the perception to the contrary that appears to characterize the Canadian media. (See OECD, 2004) If negotiations on a customs union created leverage in reducing the US agricultural distortions, all to the better. On the other hand, US distortions might give Canadian negotiators an out in negotiating our distortions, leading possibly to the type of patchwork that is sometimes necessary in trade negotiations, for instance a common minimum agricultural tariff, topped up by tariffs and restrictions at the Canada-US border. This is messy but feasible.

Canada's cultural community is possessive of its privileges and restrictions on Canadians' choices. I believe our cultural policy cripples the industry by putting too much power in the hands of bureaucrats and regulators and too little in the power of cultural consumers, both here and in the rest of the world, limiting the appeal of Canadian culture. Ironically, this failure to attract a paying audience becomes an argument for protecting Canadian culture on the grounds it would be overwhelmed without protection because of its limited appeal – a truly perverse circle of evidence and logic. I would note the explosion of the appeal of British culture, both worldwide and at home, after Margaret Thatcher cut cultural "supports" and got bureaucrats and regulators out of the business of deciding what were desirable cultural products, and the dismal state of the appeal of British cultural products under "old" Labour's protections and subsidies.

Nonetheless, cultural products are largely weightless. They can move across borders electronically, which means they do not pose a security threat in the way that goods do. Developing common procedures for the shipment of books, magazines, disks, etc. – which are often produced domestically in any event after electronic transmission or the reproduction of a master copy – should not be an intractable problem. Thus, there is potential for developing a customs union that would include "hard" cultural products, while leaving Canada's cultural "protections" in place.

As for the external tariffs, the Canadian and US economy are highly similar. They would benefit or suffer harm from tariff barriers in much the same way. Developing a common tariff regime would hardly be an intractable problem in good faith negotiations. Here too,

gains or losses for Canada would be small and likely cancel each other out, while creating large benefits in increased access to the US market. The most contentious issue likely would concern nations under US embargo, such as Cuba and Iran. US policy at least on Cuba, in my view, is wrong. If negotiations pushed the United States to a more sensible policy or an exception for goods moving through Canada, all the better. If not, loss of trade with Cuba (and Iran) would have little negative impact on Canadians, assuming the tourist trade for obvious reasons would be exempted.

Finally, let's consider the argument that closer ties with the United States would force Canada to adopt US fiscal and social policies. This is simply silly. Integration in Europe is far deeper than the customs union discussed here, but tax/social policy regimes range from similar to or *below* that of the United States (Ireland) to, well, French levels.

#### Negotiations: Another potential cost

I believe it is possible to interest the United States in the idea of a customs union if it were presented as largely a security measure, creating a common security perimeter maintained by both nations. But, negotiations are hardly a guaranteed success.

It is often argued that the United States won't agree to a customs union, and so we shouldn't try. Could initiating negotiations cause harm? The literature is skeptical that negotiations would be successful, but does not present any reason to believe that they could damage existing trade relations. There is not the space here to develop scenarios where damage could result, but their likelihood is close to zero and likely practically indistinguishable from zero if the negotiations are conducted on the Canadian side competently and in good faith. There is no reason to believe they would not be.

Perhaps the biggest political barrier would be the United States' difficulty in reaching an agreement with Canada that did not include Mexico. Still, if the deal were presented as a security pact, it well might gain political traction in the United States, possibly as a future model for an agreement with Mexico, as was the FTA. Even if negotiations fail, useful side agreements might be possible. Moreover, the work, contacts, information, and understandings developed in good faith negotiations might well produce favourable intangibles. It is difficult to see how they would produce harms.

#### Conclusion

Arguments based on "sovereignty" and the malign view that sovereignty, state power in effect, is intrinsically good collapse on examination, except for those ideologically committed to great state power. If sovereignty provides no argument, the question becomes whether a customs union would benefit Canadians, the ultimate holders of Canadian sovereignty. The answer is yes. The costs are minimal or zero but the benefits are large, though mainly as a partial insurance policy against trade disruption. Moreover, Canada would stand a good chance of gaining some sort of exemption in agriculture and cultural areas, though such exemptions would work to the detriment of Canadians.

In the end, it is difficult to see the "sovereignty" argument as anything other than an attempt to protect state power to benefit privileged and politically powerful rent-seeking

groups and, in order to benefit these groups, suppress, for example, Canadians' rights to sample the speech they wish and trade freely with each other and foreigners.

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