

Why Canada Won't Budge on Trade

By Drew Fagan

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Dispute settlements and dairy tariffs go to the heart of how Canada sees its relationship with the United States.

TORONTO — In 1986, possibly the last time the United States-Canadian trade relationship made front-page news, the Op-Ed section of this newspaper ran an article with the headline “[Worthwhile Canadian Initiative](#).” Joke or not, the phrase entered the journalistic vernacular — what could be more boring than trade policy? Trade policy with Canada!

That same attitude may be at work in the recent dust-up between the two countries over President Trump's efforts to revise Nafta. Mexico, the third partner in the trade deal, has already reached its own arrangement with Washington. So why is Prime Minister Justin Trudeau digging in his heels? This is not a country known for taking bold stands.



U.S. President Donald Trump shakes hands with Canada's Prime Minister Justin Trudeau (R) in a bilateral meeting during the G7 Summit in the Charlevoix town of La Malbaie, Quebec, Canada, last June. Leah Millis/Reuters

Admittedly, the core issue sounds incredibly arcane: namely, the mechanism for how to resolve trade disputes. In fact, Mr. Trump's efforts to rewrite that mechanism go not only to the heart of Nafta but also to the very center of how Canada sees its relationship with its southern neighbor. How does a country like ours — the world's 10th-biggest economy but less than one-tenth the size of America's — ensure it gets equal treatment?

The United States and Canada have had trade disputes before. In 1994, there was a case involving the trade in live swine. A recent case dealt with supercalendered — glossy — paper. Each time, the conflict was resolved through a system of international panels, established by the 1986 negotiations (and later expanded under Nafta to include Mexico).

Canada had fought hard for this system in the original trade talks. We insisted that the pact build up rules as well as tear down tariffs. But the United States had demanded that disputes be dealt with in its own courts. Prime Minister Brian Mulroney refused to budge, and in the end Washington did something almost unbelievable: It agreed, and in doing so limited its own domestic authority.

“O.K., you can have your damn dispute settlement proposal,” Treasury Secretary James Baker told the Canadian side.

But Canada's victory was really a compromise. The countries agreed to a two-tiered system: Domestic courts would rule first, while countries could appeal to binational panels in limited circumstances.

Now Mr. Trump's negotiators want to take back that compromise and once again let domestic courts have the first and final say.

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As a practical matter, this is a pretty small change: The system runs smoothly, and appeals are less important than they used to be, at least in some people's eyes. And there's always the World Trade Organization, with its own dispute resolution process, as a backstop.

But practical matters aren't the point. Many Canadians believe that Mexico caved to Mr. Trump, putting Canada in a precarious position as the outlier. The real issue here, as before, is the power imbalance.

The dispute-resolution issue is similar to the other main obstacles facing negotiators: Canada's protection of its culture and dairy sectors. Canadians are intensely protective of their culture, especially when it is so close to, and so often overshadowed by, the United States'. Because the original trade deal included protections for what Canada considered the critical pieces of its cultural heritage,

Ottawa has insisted that such protection be maintained in any new deal; Washington, obviously, disagrees.

Dairy is also a case where the principle may seem more important than the practical. Canada sets domestic prices for dairy products; for this to work, it needs to place limits on how much milk and cheese it imports. Canadian negotiators are willing to loosen up on some of those limits, as long as the country's command-and-control system survives. But that system is exactly what Mr. Trump has attacked with his tweets about "270 percent tariffs," which in fact are rarely applied.

In other words, the reason these talks have been so hard is that the two sides see them in fundamentally different terms. To Americans, Canada seems to be making a big fuss over minor details. To Canadians, Americans — and Mr. Trump above all — seem intent on undermining hard-fought protections.

Canada is perfectly happy to negotiate changes to Nafta; in fact, they're overdue. The negotiations should have been about working together in the digital age. A deal should simplify rules of origin and align regulations for trade in goods, as well as focus on trade in services. It should open up government procurement and clarify intellectual property rules. Some of these are in play, but they're hardly anyone's priority.

Thirty years ago, Prime Minister Mulroney was intent on deepening trade relations with the United States. Now Prime Minister Trudeau has named a minister of international trade diversification. Diversification from what? No one in Canada need ask.

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