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It would be a shame if something happened to Brian Mulroney's great economic legacy

Things are much less rosy decades after the former prime minister paved the way for a North American Three Amigos trade relationship

Lawrence Herman

Lawrence Herman is an international lawyer with Herman & Associates and senior fellow at the C.D. Howe Institute in Toronto.



Brian Mulroney is applauded as he stands in the House of Commons in 1988 to vote in favour of the Canada-U.S. Free Trade Agreement, a precursor to the 1994 North American Free Trade Agreement (NAFTA).

There's good reason to celebrate the late Brian Mulroney's courage in embarking on the quest for a free trade agreement with the Americans in his first term as prime minister.

While eliciting strong opposition in many quarters at the time, it was a historically bold move, and the Mulroney government's milestone achievement in getting Washington to sign the 1987 Canada-U.S. Free Trade Agreement, or FTA, has to be viewed in that light.

Equally significant was FTA's successor, the North American Free Trade Agreement, bringing in Mexico as a partner in 1994. While NAFTA came into force under prime minister Jean Chrétien, it was negotiated and concluded under Mr. Mulroney, and stands as another fine achievement of his time in office. NAFTA cemented North American trade relations among the "Three Amigos," to use Mr. Chrétien's positive description at the time.

But Three Amigos was then. Today, things are much less rosy. In spite of the Canada-U.S.-Mexico Agreement that succeeded NAFTA in 2018 (as a result of president Donald Trump's animosity toward a deal tied to Canada and Mexico), bilateral trade relations are in a fraught state. There are a range of irritants on the boil, unlikely to simmer down as the Americans, whether under Democrats or Republicans, continue on the path of unilateralism – a reversal of the multilateral rules of the World Trade Organization and CUSMA.

The question is where trade relations with the Americans will go in the next while, given Mr. Mulroney's achievements decades ago. There are forces at play that pose some difficult challenges.

The first involves the continuation of unimpeded market access, the main feature of FTA, NAFTA and CUSMA, each enshrining preferential access in trade among the parties. This is allowed under WTO rules because the preferences cover all or substantially all trade between them. This was and remains a huge benefit for Canada, as well as for Americans shipping here. But the past few years have put serious doubt on the willingness of the U.S. to respect those obligations – not because of anything Mr. Mulroney agreed to, but because of the way the trade rules have been unilaterally applied.

Under WTO rules, incorporated in CUSMA, as with FTA and NAFTA, countries are allowed to resile from trade obligations for reasons of "national security" – an elastic concept, difficult to pin down, grey at the edges. While the exemption wasn't used for decades, Mr. Trump used the national security off-ramp to impose tariff surcharges on aluminum and steel in 2018. (These restrictions were eventually removed for Canada and Mexico in return for commitments to prevent steel and aluminum surging into the U.S.)

Even if resolved, national security remains one of the widest exemptions that the Americans can unilaterally employ – as in steel and aluminum – to frustrate Canadian trade access. Think of high-tech components or critical technologies.

The other problem concerns the bilateral dispute-settlement system. Getting a panel process was one of the most contentious issues in the original FTA negotiations. Brian Mulroney was committed to a deal that allowed Canada to get out from under the American trade remedy system, which had been repeatedly targeting Canadian exports. This was a deal-breaker, and it took a late-night call from him to James Baker, the U.S. treasury secretary, to get the Reagan administration to agree to a panel system.

Today, the Americans seem much less committed to the panel process, reflected in their unwillingness, after more than a year, to comply with the panel decision supporting Canada on CUSMA's automotive rules of origin. This kind of America First position and distrust of international dispute settlement is reflected at the WTO, where the U.S. has effectively paralyzed the multilateral panel process by refusing to agree on members of the Appellate Body.

While Mr. Chrétien may have lauded the Three Amigos back in 1994, the fact is that many American political leaders and trade experts never really bought into the North American concept. They rather saw the U.S. as the centre, and Canada and Mexico as appendages to the trade arrangements.

After more than three decades of the Mulroney government's milestone achievements, at least two overarching trade differences with the Americans are percolating. And more could emerge when the CUSMA comes up for review in less than two years. The challenge will be to ensure that it does nothing to lessen Brian Mulroney's vision of strong and mutually respectful relations between the U.S. and Canada.
