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The FTA’s Energy Provisions and Canada’s Oil Export Options

Kuzik, Michael

University of Calgary

The FTA's Energy Provisions and Canada's Oil Export Options

by

Michael Kuzik

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Abstract

The 1989 Canada-U.S. Free Trade Agreement includes an energy chapter that spelt the end of arbitrary state intervention in Canada's oil industry and establish a new course for Canada-U.S. oil-trade. The FTA's energy provisions helped created an atmosphere of collaboration between government and the oil industry, while paving the way to a free trade agreement. Ottawa did give up some policy-making powers, but less than what critics contend. One of the main objectives of the energy chapter was to remove government from the day-to-day activities in Canada's oil industry. The oil sector itself, the thousands of companies involved in this important economic sector, are largely unaffected by its provisions. However, too much has been made of the constraints imposed on government, and not enough attention focused on the business atmosphere it fostered and the positive legacy it has created.

Preface

The last twenty-five years of oil trade between Canada and the United States has been both tranquil and productive. The main reason for this has been deregulation of the oil sector, capped by the energy provisions in the 1989 Canada-U.S. Free Trade Agreement (FTA). That tranquility is now in jeopardy, given environmental concerns and vastly increased U.S. domestic oil production. To determine what Canada's options are going forward I have examined the Canada-U.S. oil trade by looking closely at the FTA's energy provisions, how they came to be, and what their affect is on Ottawa's policy-making options. By looking at the history of Canada-U.S. oil trade and examining the FTA's energy provisions, often using interviews with key participants and observers of the FTA negotiations, insight is gained into the balance that has now been struck between public and private sector interests in this vital economic sector.

Acknowledgements

I would like to thank Derek Burney, Professor Andre Plourde, Gordon Ritchie, and Professor Michael Hart for their time, insights, and perspectives during lengthy interviews and other correspondence. Given time constraints, it is unfortunate that other interviews had to be cited as anonymous. To those unnamed individuals I also say thank you. At the Centre for Military and Strategic Studies at the University of Calgary, I would like to thank Professor James Keeley for granting me a much-needed extension to complete my research and writing. I also want to express my gratitude to my Supervisor, Professor Paul Chastko for editing, commentary, suggestions and, ultimately patience. Also, many thanks to Evan Spiropolous, and fellow student Kelly Ogle, who read countless drafts and were always encouraging.

Dedication

Having a busy family and working life required that I needed the understanding and encouragement of my entire family over an extended period to complete the necessary research and writing of this thesis. To my spouse Jane and to our children, Matthew, Jessica, and Sophie I say thank you, I love you and dedicate this project to all of you. (Dad, when is it going to be finished? Soon Matthew, soon)

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Abbreviations

b/d	barrels of oil per day
CAPP	Canadian Association of Petroleum Producers
EIA	Energy Information Agency
FERC	Federal Energy Regulatory Commission
FIRA	Foreign Investment Review Agency
FTA	Canada-U.S. Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
IEA	International Energy Agency
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NEB	National Energy Board
NEP	National Energy Program
NOP	National Oil Policy
OECD	Organization for Economic Cooperation and Development
OPEC	Organization of Petroleum Exporting Countries
PADD	Petroleum Administrative for Defence Districts
PIP	Production Incentives Program
SPR	Strategic Petroleum Reserve
TNO	Trade Negotiations Office
U.S.	United States of America
WTO	World Trade Organization

Introduction

The 1989 Canada-U.S. Free Trade Agreement (FTA) includes an energy chapter that helped put the final nail in the coffin of arbitrary state intervention in Canada's oil industry and, at the same time, helped establish a new course for the oil-trade between Canada and the United States.[1] Prior, Ottawa had long sought to "manage" the domestic oil industry, using it as an economic and political policy tool until it commenced actively deregulating the oil sector in the early 1980s, culminating with the FTA's energy provisions. Taken in aggregate these changes amounted to a national energy plan in reverse, calling for a withdrawal of traditional federal powers in Canada's oil industry.

Twenty-five years after the signing of the FTA, Canada's oil policy today is a series of principals, agreements, and accords that reflect a blend of private and public interests. The key principals include the following of a free market orientation, respect for provincial authority over their resources and, when necessary, "targeted intervention" in the marketplace to achieve specific policy goals. The inclusion of targeted intervention illustrates that Ottawa continues to retain key policy levers. The agreements referred to include the Western and Atlantic accords signed in 1984 between Ottawa and the oil-producing provinces and the North American Free Trade Agreement or NAFTA[2], which "is a cornerstone of our energy policy with regard to trade."[3]

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[1] The FTA was signed on January 2, 1988, but went into effect on January 2, 1989.
[2] The bi-lateral energy provisions between Canada and the United States are essentially the same in both the FTA and the subsequent North American Free Trade Agreement that went into effect on January 1, 1994.
[3] Natural Resources Canada "Overview of Canada's Energy Policy" www.nrcan.gc.ca/energy/policy/1352

The result has been a generation of tranquil and very productive oil-trade between Canada and the United States, quite a departure from the previous fifteen years, marked by on-going friction between Ottawa and Washington over policy decisions. Following the implementation of the FTA in 1989, Canada's oil industry integrated further into the U.S. oil marketplace, ensuring that the United States would remain Canada's only oil export customer while Canada became one of the largest oil producing nations on earth.[4] Today, however, the ongoing debate and delay over the Keystone XL pipeline and the massive increase in U.S. domestic oil production illustrates Canada can no longer take for granted its growing oil-trade with the United States. Leaders from both industry and government are now calling on Canada's oil industry to seek additional oil export markets and lessen its dependency on the U.S. market. At the same time, some are suggesting Canada should seek court action if the Keystone XL pipeline proposal is rejected arguing Washington's refusal to approve the pipeline abrogates the FTA.[5] Amid all this controversy, it is an appropriate time, twenty-five years after it went into effect, to revisit the FTA and its energy chapter. This thesis will examine how the FTA's energy provisions came to be and how the agreement has influenced Ottawa's policymaking in the oil sector and in doing so use it as a window on the changing oil-trade between the two nations.

The FTA's energy provisions, building on previous changes, created an atmosphere of collaboration between government and industry that helped create the business environment responsible for both a dramatic increase in domestic oil production and increased Canada's oil exports to the United States. Undoubtedly, Ottawa did give up some policymaking powers to achieve free trade with Washington. For example, there can be no discrimination in times of shortage between Canadian and U.S. buyers of Canadian oil and the U.S. proportion of Canadian

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[4] Energy Information Agency "Canada: (2013) www.eia.org
[5] Financial Post, "Harper shows XL fortitude" (October 5, 2013), FP3.

oil exports received cannot fall below the last three-year average during an oil disruption. There can also be no discrimination between U.S. or Canadian companies purchasing each other's assets, and no levying of import or export taxes or duties. However, there are three very important points that I find critics of the FTA and its energy provisions often ignore, downplay, or do not well understand. First, the FTA's energy provisions refer to the obligations of one state to another – the government of Canada and the government of the United States, not private industry. The private sector is free to pursue its own course of action. In other words, Canada's oil exports could be destined to any market outside of North America, infrastructure permitting, if industry, not government, made the decision in the course of normal business. In theory, all of Canada's oil could go to Asia if industry made the decision, and this would not break any of Canada's FTA obligations.

Second, despite what critics say, the energy policy levers retained by Ottawa post-FTA are very substantial and can move government policy forward if need be. Ottawa has policy instruments at its disposal such as the National Energy Board, legislative powers to introduce increasingly more stringent environmental laws, controls over foreign ownership, and entering into future trade agreements, the current European Union and Trans-Pacific Partnership negotiations being two examples. The FTA's energy provisions were not about tariff reduction they are about limiting, but not eliminating, government policy options while promoting the benefits of an open and free marketplace.

Finally, many of the bilateral obligations spelt out in the FTA's energy chapter are, though I will argue not as binding as Ottawa had hoped, found elsewhere in other multi-lateral commitments Ottawa has signed, such as the World Trade Organization (WTO) and the

International Energy Agency (IEA).[6] In this respect, many of the FTA's energy provisions were not new at all, simply reaffirmations of previous well-known bilateral agreements.

Too much has been made of what the FTA means in terms of specific policy constraints rather than the business atmosphere it established, and after a generation, the legacy it has created. The Canada-U.S. Free Trade Agreement with its energy provisions are an enormous success story for Canada. Despite the heated rhetoric of the time, some of which continues to this day, North America is now one of the most sought after regions of the world for capital investment in its oil sector because of its resource potential, political stability, and rule of law. I contend that with less government intervention the Canadian, indeed the North American oil industry, and consumers alike have been net beneficiaries. The FTA's energy provisions helped lay the necessary groundwork.

Structure of the Thesis

This thesis has eight sections. Following a brief introduction to the FTA's energy provisions there is a review of terms used, such as free trade, policy making, especially in the energy sector, a made-in-Canada national oil policy, and the Canada-U.S. oil trade. What then follows are three themes the thesis will use in framing the issue. First, Canada's has always had and will always have a resource-based or staples-based economy. Second, With the FTA's energy provisions Ottawa was taking advantage of the existing global oil trade and regulatory architecture. Third, Canada will continue to rely on the United States as its major trading partner far into the future.

[6] The WTO had not yet been formed at the time of the FTA. Instead, Canada was a member of its predecessor at the time, the General Agreement on Tariffs and Trade (GATT), an agreement more than an organization.

Chapter One is entitled "Canada's Oil Industry and the State" and covers the birth and growth of Canada's oil industry from the late 1940s to the mid-1980s. A tripartite set of interests represented by Ottawa, Washington and its domestic oil industry all played an important role in Canada's maturing oil sector. Many oil-trade irritants between Canada and the United States during these years found their way into the FTA's energy provisions.

Specific government policies looked at are the National Oil Policy and the National Energy Programs. The National Oil Policy of 1961 secured a market for Canadian oil production. The trade off was closer integration into the U.S. oil market and continued reliance on imported oil for eastern Canada. The National Energy Plan of 1980, among its many goals, was an attempt by Ottawa to insulate Canada from the global marketplace, to Canadianize the domestic oil sector, and to substantially lessen U.S. domination over Canada's energy sector. However, not entirely of its own doing, the National Energy Plan was a policy failure. Nevertheless, without the experience of the National Energy Plan there may not have been the political will to deregulate the energy sector and to negotiate with the United States the energy provisions within the FTA. Chapter Two, "The Canada-U.S. Free Trade Agreement," begins by examining Canada's conflicted attitude towards free trade with the United States. The chapter then examines the political and economic conditions at the time, and the importance of Brian Mulroney's and Ronald Reagan's political and personal kinship, as Ottawa asked Washington to commence free trade negotiations. Finally, there is a look at U.S. energy security concerns, the continuing impact of the 1973 Arab oil embargo, and how Canada has long been considered an important source of oil in case of a supply disruption. Chapter Three is called the "Free Trade Agreement's Energy Chapter" and delves into the energy chapter's four detailed provisions, what they mean, and how they have affected Ottawa's ability to set oil policy.

The FTA's energy provisions cover four general areas: First, adherence by both nations to the GATT Agreement. Second, a curtailment of arbitrary government intervention within a strong state regulatory framework. Third, U.S. energy security issues and how the proportionality clause was meant to satisfy these concerns, but not with the iron-glad guarantees that many to this day believe were imposed on Canada. Finally, how the FTA's provisions dovetailed with the all ready existing International Energy Agency Agreement. Chapter Four is entitled "Changing Times" and examines how growing environmental concerns and rising U.S. domestic oil production may change the Canada-U.S. oil trade, meaning that Ottawa may be losing the biggest trade advantage it had at the time of the FTA's signing. The thesis ends with some concluding remarks.

Terms & Definitions

The Concept of Free Trade

For Canada international trade, especially with the United States, is of the utmost importance. While in the U.S. the value of trade (exports plus imports) as a percentage of GDP was 21 per cent in 2010, the comparable figure for Canada was 49.3 per cent.[7] Moreover, almost 74 percent of Canada's worldwide exports go to the United States. Canada needs trade to grow and to prosper. Given its reliance on trade, Ottawa has long viewed free trade as a potential policy goal. Classical free trade, as the name implies, is a policy by which a government does not discriminate or interfere in anyway against imports or exports by applying tariffs to the former and subsidies to the latter. According to the law of comparative advantage this permits trading partners to, achieve mutual gains from the trade of goods and services. However, a simplification of the classical economic interpretation of global trade, and especially the notion of free trade, is that it presumes the primacy of open and free markets to deliver its benefits, but this is seldom the case in reality. Gilpin reminds us that absolute free trade between nations does not exist; only managed trade does.[8] This is because governments often change trade rules so that in the contemporary world, market forces need to coexist with various degrees of state intervention.[9] This is the reality of free trade in today's world.

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[7] Ian F. Fergusson, "United States-Canada Trade and Economic Relationship: Prospects and Challenges" Congressional Research Service (September 14, 2011), 3.
[8] Robert Gilpin, Global Political Economy: Understanding the International Economic Order (Princeton: Princeton University Press, 2001), 67.
[9] Ibid., 121.

What is Public Policy?

Thomas Dye's often-used definition of public policy is being "whatever governments chose to do or not to do."[10] Government action, therefore, is by definition central to public policy. Canada's small population and domestic market and the vast distances between markets meant that Ottawa has historically been an active participant in the Canadian economy.[11] Governments in Canada affect change through policy decisions, and then develop the regulations that have the force of law to ensure their compliance. Canada is a reflection of these policy decisions made over the years. Public policy is therefore a conscious choice on the part of the state to push ahead with a particular policy as part of a larger political agenda.

Ottawa has long used national economic strategies to aid in regional and national development. Often the state and industry are partners, other times not, but there is a symbiosis at play. The state needs the market because of its efficiency in delivering goods to consumers. The market needs the state to provide a legal framework that honours contracts and other legal obligations, such as property rights.

Energy Policymaking

Traditionally, energy, specifically oil production, has been a target for state policy initiatives because of its importance to both the economy and the political dynamics of Canada. Oil is not just another sector of the economy or another commodity. Oil means wealth and that wealth translates into economic and political capital. Thus, all governments want to control this valuable commodity through policy decisions. G. Bruce Doern defines energy policy in Canada

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[10] Thomas Dye, Understanding Public Policy (New York: Longman Press, 1984).
[11] Michael Howlett, Alex Netherton & M. Ramesh, The Political Economy of Canada: An Introduction, (Don Mills: Oxford University Press, 1999), 6. Note: For example, in 1980 there were 454-crown corporations operating in Canada. Presently most crown corporations now have been privatized.

as "government actions aimed at influencing and shaping the supply of energy sources and fuels and the demand for these various users of energy."[12] This definition sounds simple but is exceedingly complex in practice. For example, policy making involves the Prime Minister's Office, the Cabinet, different departments within the federal bureaucracy, a multitude of regulatory agencies, ten provincial governments, all with differing regulations and political agendas, dealing with a myriad of energy companies that make up Canada's oil industry, different grades of oil and refining needs, and millions of end consumers.

Canada is a large country with difficult and challenging geography and topography, with oil production located far from population and industrial centres requiring massive and costly infrastructure. Another challenge for Canadian policy makers is the multiple jurisdictions governing natural resources. Compared to other Western countries Canada probably has the most divided and decentralized jurisdictional arrangement for making energy policy.[13] The oil-producing provinces, mainly Alberta, Saskatchewan, and Labrador and Newfoundland, own the resources, while the federal government retains jurisdiction for the transportation or trade of those resources over provincial or international boundaries. The only oil reserves owned outright by Ottawa, also known as the Crown, are located in areas within the country or its offshore exclusive economic zone, but outside the territory of any province.[14] Canada's provincial governments licence acreage for exploration purposes, regulate oil production, and set royalty rates, among other regulatory powers. All the provinces also have their own energy regulators.

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[12] G. Bruce Doern, "Canadian Energy Policy and the Struggle for Sustainable Development: Political-Economic Context," in Canadian Energy Policy and the Struggle for Sustainable Development ed. G. Bruce Doern (Toronto: University of Toronto Press, 2005), 4.

[13] G. Bruce Doern and Monica Gattinger, Power Switch: Energy Regulatory Governance in the Twenty-First Century (Toronto: University of Toronto Press, 2003), 23.

[14] Andre Plourde, "Canada," in Oil and Gas in Federal Systems Edited by George Anderson (Don Mills: Oxford University Press, 2012), 88-120.

Complicating policy making further are the differences in the political/economic culture between Canada's largest oil-producing province, Alberta, and Ontario and Quebec, where the majority of Canadians live. Compared to other regions of the country Alberta most resembles the United States in terms of its political culture. For decades, largely due to the oil business, there has been movement of people and money between Alberta and U.S. oil centres such as Houston and Dallas. Ideas about the size and role of government, the ability of the marketplace to achieve both efficiencies and wealth, have long been a feature of Alberta's political dynamic. At the same time, there is also a lingering mistrust felt in Alberta about Central Canada's long-time control of both political and financial power.[15] Therefore, energy policy has been a challenge for Ottawa to achieve given the differing regional differences, geological endowment, and jurisdictional realities.

Canada has always had some sort of policy towards oil extraction and oil exporting since even before the major Leduc discovery in the late 1940s, to the more recent massive expansion of Alberta's oil sands. Just as there is no pure free trade, there is no pure marketplace. There is always some degree of intervention, some manipulation, in the marketplace. In 1961, Prime Minister John Diefenbaker announced the National Oil Policy (NOP) to help Western Canada's oil industry by fostering increased export ties to the U.S. mid-West. The trade-off was agreeing not to extend an oil pipeline east of the Ottawa Valley. Diefenbaker's NOP was a government policy decision that largely determined the future course of Canada's oil exports. The decision also proved to be a boon to Western Canadian oil production. The NOP was also a rare example of positive government intervention.

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[15] Mary Janigan, Let the Eastern Bastards Freeze in the Dark: The West Versus The Rest Confederation (Toronto: Knoff Publishers, 2012).

On the other hand, Pierre Trudeau's creation of Petro Canada, among many other policy moves in the 1970s, and his government's National Energy Plan of early 1980s, marked the apex of federal intervention into the Canadian oil industry with an ensuing backlash still felt today. Trudeau's statist policies had elements of nationalization, expropriation, discrimination against foreign – mostly U.S. companies, and state direction of oil exports. Trudeau had little faith in the marketplace to deliver the economic and political goods unless there was strong government oversight. Trudeau, by his constant intrusions, created a dysfunctional marketplace. There has been no repeat of his policy approach to Canada's oil industry for over thirty years for good reason. Trudeau's policies attempted to predict oil prices and pick eventual winners, neither of which the state can do as well as the private sector.

In contrast, the deregulation of the Canadian oil industry was already underway when Brian Mulroney became prime minister in 1984. However, he increased both the breadth and the depth of deregulation by agreeing to the subsequent Western Accord and then the Free Trade Agreement's energy provisions in exchange for greater Canadian access to the U.S. market. Mulroney made the marketplace a central participant in Canada's national oil policy. Moreover, Mulroney agreed to penalties if future governments intervened outside of what the FTA stipulates. This has remained the status quo. His Liberal successor, Jean Chretien, was pragmatic enough to leave the FTA untouched. Moreover, despite his ideological differences with Mulroney, he not only kept the FTA, but he signed the NAFTA that went into effect in 1994, with essentially the same bi-lateral energy provisions between Canada and the United States.[16] More recently, Stephen Harper has been supportive of the status quo regarding the relationship

[16] Chapter 9 of the FTA contains the energy provisions. Chapter 6 of the subsequent NAFTA contains its energy provisions. In any substantive way they are identical, the major difference being Mexico is exempt in NAFTA from any proportional obligation to the other two Parties. Little effort will be made to differentiate the FTA which went into effect on January 2, 1989 from NAFTA which went into effect on January 2, 1994.

between Ottawa and Canada's oil industry. The Prime Minister has publicly mused in recent years about the need for industry to find oil export alternatives to only the U.S. market. The future policy challenges are complex and even more numerous than in the past, Today, according to Monica Gattinger, in addition to the marketplace itself, governments face three demanding policy imperatives when it comes to energy: environment, security and social acceptability.[17] One could also add Aboriginal land claims to this list of challenges.[18]

The Free Trade Agreement's Energy Provisions

Ottawa's strategic goal entering into the FTA negotiations was to seek a wide ranging, multi-sector free trade agreement with the United States, by far its largest trading partner. Tactically, there was little Ottawa could offer Washington given the dramatic asymmetry of the two nations' economies, populations, and militaries other than improved access to Canada's vast oil reserves.[19]

The energy chapter of the FTA has four general themes: First, there is the recognition of the importance of the General Agreement on Tariffs and Trade (GATT) as a framework for future trade negotiations, definitions, and purpose, which both nations agreed to follow and build on. Second, there were expressed limits to which governments could intervene in the marketplace, with no such limits placed on the private sector. Third, a specific clause, referred to as "proportionality," would be evoked to protect one Party if the other Party stepped into the oil

[17] Monica Gattinger, "A National Energy Strategy for Canada: Golden Age or Golden Cage of Energy Federalism. Paper presented at the 2013 Annual Conference of the Canadian Political Science Association, June 4-6, 2013, University of British Columbia.

[18] One of the biggest obstacles for Enbridge's Northern Gateway Pipeline project is the objection of First Nations along the proposed route.

[19] Sidney Weintraub, "U.S.-Canada Free Trade: What's in it for the U.S.?," Journal of Inter-American Studies and World Affairs (May 1984), 255-244. Note: Weintraub in the article writes, "While they might not materialize in practice, the potential gains for Canadian industry in free trade with the United States are substantial. The potential gains for the United States, however, are modest."

marketplace and manipulated oil supplies, cutting off or reducing oil to the other Party. In the event of proportionality, no less than 36 months of previous oil exports would be available for commercial purposes to the nation affected by the reduction in oil imports. Finally, there was a reaffirmation of the importance of the International Energy Agency (IEA) and its existing policy of sharing oil among members during times of a supply disruption.

Today, even experts do not agree on an interpretation of the FTA's energy provisions or their affect on policymaking.[20] Andre Plourde, an economist, is currently Dean of the Faculty of Public Affairs at Carleton University. In the past, he has been president of the International Association for Energy Economics, a former Associate Assistant Deputy Minister for the Energy sector at Natural Resources Canada and a member of Alberta's Royalty Review Panel. He has written extensively about Canada's energy sector, especially the affects of the FTA. Long viewed as an expert in his field, Prof. Plourde argued in a paper published soon after the FTA went into effect, in referring to the much-maligned Trudeau-era National Energy Program, that "The FTA cannot be seen as an instrument preventing Canadian governments from adopting an NEP-style approach to energy policy."[21] Simply put, the FTA did not preclude the possible introduction of a national energy program by a future federal government. Striking a middle ground, John McDougall, another policy expert on the FTA wrote, "In short, the FTA has not necessarily reduced the part that national policies can play in shaping North American energy

[20] Peter L Miles, "Observations on the North American Energy Trade," Prepared remarks by President, Research, Canada Energy Research Institute, to the Standing Senate Committee on Foreign Affairs, Calgary, Alberta, (February, 2003), 19. Donald M. McRae and Debra P. Sleger, Editors, "Understanding the Free Trade Agreement" Institute for Research on Policy, Halifax (1988), 180. Andre Plourde in an e-mail to the author, May 10th, 2013. "I have run into differences in interpretation on a fairly regular basis."

[21] Andre Plourde, "The NEP Meets the FTA," Canadian Public Policy XVII:1:14-24, (1991).

trade, at the very least, it has not done so as decisively as both sides claimed, with fear or favour, during the debate over its merits."[22]

However, over time, a differing consensus in the literature began to emerge. For example, oil historian Tammy Nemeth concludes that, "[The FTA energy provisions] do limit Canada's policy options."[23] Professor Monica Gattinger is currently authoring a book on Canada-US energy and energy-climate change relations since the coming into force of the Canada-US Free Trade Agreement. She states, regarding the trade agreement. that "The FTA's energy chapter essentially disallows price controls in the oil and gas sectors, prohibits the establishment of policies to create different domestic and export prices for energy and would virtually eliminate the possibility that the Canadian government would intervene to reduce the quantity of energy offered for sale to the United States."[24] Gordon Laxer, a professor of Political Economy at the University of Alberta and the Director of the Parkland Institute, believes that Canada's lack of policy action "effectively guarantees the United States access to Canada's energy resources in perpetuity, or until NAFTA and the FTA are renegotiated or ended, or the resources run out."[25] University of Toronto professor Stephen Clarkson is also highly critical of the FTA, "These provisions effectively castrated federal government powers so as to give U.S. energy needs and Alberta producer's concerns priority over any pan-Canadian interest in directing long-term energy supplies towards domestic economic ends under conditions of economic sustainability."[26]

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[22] John McDougall, "The Canada-U.S. Free Trade Agreement and Canada's Energy Trade," 1-9.
[23] Tammy Nemeth, "Continental Drift: Canada-U.S. Oil and Gas Relations 1958 to 1988," SHAFR 2004 Conference at Austin, Texas, (25 June 2004), 16. http://www.mtholyoke.edu/acad/intrel/Petroleum/nemeth.htm.
[24] Monica Gattinger, "Canada-United States Energy Relations: From Domestic to North American Energy Policies," in Policy: From Ideas to Implementation, Eds. Glen Toner, Leslie A. Pal and Michael J. Prince (Montreal & Kingston: McGill-Queen's University Press, 2010), 210.
[25] Gordon Laxer and John Dillon "Over a Barrel: Exiting from NAFTA's Proportionality Clause," Parkland Institute (May 2008), 1.
[26] Stephen Clarkson, Does North America Exist: Governing the Continent after NAFTA and 9/11? (Toronto: University of Toronto Press, 2008), 182-204.

Jan Krouzil provides one of the best examinations of the actual FTA negotiations in his Ph.D. dissertation, "Canada's Free Trade Policy Experience: From Economic Adjustment to Civil Participation." He concluded, "There appears to be little doubt that the federal government had given up some of its future policy-making flexibility in the energy field.[27] More recently, Andre Plourde, with the full passage of time, agreed in an interview that the FTA's energy provisions do make it more difficult for Ottawa to create a national energy plan, referring to any move by Ottawa to dictate where Canadian oil exports go.[28]

To be fair, there has been no need for a consensus for an interpretation of the FTA's energy provisions since no ruling body has ever had to offer an opinion. The issue of either Canada or the United Stated not being able to proceed with a particular policy decision because of the FTA has not yet occurred in almost twenty-five years of post-FTA oil-trade between Canada and the United States. Therefore, it may be easy to dismiss the FTA's energy chapter as being "much ado about nothing." However, to dismiss the FTA's energy provisions because they have not been used misses the key point that these energy provisions were reflective of historical fears and policy goals held by both Ottawa and Washington and that a deal was in both nations' best interests at the time and that they would have a lasting legacy.

A National Oil Policy for Canada

Discussions, for some, over a national energy policy still pivots around the need for a national oil export strategy that exert more direct federal control over the oil resources, dramatically increasing environmental controls and responding to the preponderance and motives of the United States. Proponents of this approach are not convinced that depending more on free

[27] Jan Krouzil, "Canada's Free Trade Policy Experience: From Economic Adjustment to Civil Participation," (Unpublished Ph.D. diss., University of Toronto, 2001), 235.
[28] Andre Plourde in conversation with the author, August 1, 2012.

markets and less on government involvement is the appropriate direction for Canada. For example, Annette Hester believes that corporate decisions made in the marketplace are not always in Canada's national interest and that Canada now finds itself with "an almost fanatical devotion to the concept of free markets."[29] Because of Ottawa's faith in the marketplace, Hester argues that Canada's national interests are ignored while corporations determine government policy in pursuit of profits. Hester believes a state-driven national energy policy approach is required.

However, history has shown that national energy policies often have disastrous and unintended consequences. Critics of the current free market ignore or dismiss two important points: How does Canada arrive at a coordinated policy with so many different interests and jurisdictions in place? The provinces control their own natural resources while Ottawa and the provinces have overlapping jurisdiction over the environment. Ottawa alone has jurisdiction over interprovincial and international trade, as well as control over natural resources in frontier regions, such as the Arctic and offshore regions. Anonymous interviewee believes that finding a consensus between ten provinces, three territories, and Ottawa will be exceedingly difficult and, in any event, a move to a national policy "would be highly dangerous" and "doomed to failure."[30] Looking back at past attempts by the state to manage Canada's oil industry Earle Gray concludes, "Let the markets decide. Any national strategy that focuses on a punitive winner will almost certainly be disastrous."[31] A national policy for Canada's oil industry should not concern itself with the minute details of oil or other energy projects. Any future national policy approach

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[29] Annette Hester, "The New Global Energy Geopolitical Game: Is Canada ready to Play?" Canadian International Council (January 2009), 4.
[30] Anonymous interviewee # 1.
[31] Earle Gray, The Great Canadian Oil Patch: The Petroleum Era from Birth to Peak (Calgary: JuneWarren Publishers, 2004), 537.

should be a process-driven that discusses how to deal with issues, rather than on specifics. Decisions about individual projects are best left to industry and the pertinent regulatory bodies.

Canada-United States Oil-Trade

For our purposes, the bringing together of buyers and sellers is what constitutes the Canada-U.S. oil-trade. This oil trade has two important aspects. One, Canada has only one buyer of its oil, the United States. No other oil-producing nation of consequence has only one export customer. Two, the Canadian oil industry is not monolithic. To say Canada, as a single oil producer, exports oil here or there is inaccurate. Rather, thousands of companies, large and small, are in the business of exploring, developing, or transporting oil in Canada. Together they create a Canadian oil industry that through their collective actions have built an entire industry to serve a single export customer, the United States. Concerns over Canada's dependency on a single export oil market are not new, but they are growing louder and are now coming from its top political leaders. Ninety-nine percent of Canada's oil exports go to the United States, representing 16 percent of all trade between the two countries.[32] Responding to this oil export dependency, Prime Minister Stephen Harper could not be more clear when he stated, "We cannot be, as a country, in a situation where really our one, and in many cases only, energy partner could say no to our energy products. For us, the United States cannot be our only export market. That is not in our interest, either commercially or even as I say in terms of price."[33]

[32] U. S. Energy Information Agency (EIA) www.iea.org
[33] CBC News website, "Stephen Harper takes oil sands message to American audience," (April 2, 2012). www.cbc.ca/news/politics/story/2012/04/02/harper-3amigos.html.

For decades Canadian energy companies have built pipelines sending Canadian crude oil to U.S. refineries for use by U.S. consumers with little controversy or delay.[34] If the proposed northern section of the Keystone XL pipeline is completed it will initially supply 830,000 barrels per day (b/d) of mostly bitumen from Alberta's oil sands.[35] The pipeline will also carry lighter, tight oil crude from mostly North Dakota, crossing six U.S. states, to refineries on the Gulf of Mexico. However, very determined environmental opposition in both Canada and the United States to both the pipeline and to further oil sands development – and the very use of oil itself as a long-term energy choice – has delayed Washington's final decision.

Canada's oil production has always been landlocked, lacking the necessary pipeline infrastructure to transport oil to port facilities, or tidewater that would permit Canadian oil access to world markets outside of North America. The Borden Commission Royal Report in the late 1950s made a point of mentioning this shortcoming. Furthermore, Canadian produced conventional oil, bitumen, or refined synthetic crude all receive various degrees of pricing discounts, compared to other global oil prices.[36] This pricing distortion deprives the Canadian oil industry and various levels of government of billions of dollars in profits and royalties annually.[37]

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[34] As recently as 2009 President Obama approved without delay an equally large pipeline called the "Alberta Clipper" that would feed refineries in the Chicago area with Alberta oil. It went into operation in 2013.

[35] The southern section of the Keystone XL pipeline, now known as the Gulf Coast Project, from Cushing, Oklahoma to the Gulf Coast was approved by President Obama and is presently nearing completion.

[36] Bitumen from oil sands is one of the most expensive types of oil to produce and refine globally. Today, the oil sands continues to represent the marginal barrel of crude oil – the oil that is the most expensive to produce globally.

[37] All three types of crude oil produced in Canada have differing characteristics. Production from Alberta's oil sands comes in two forms, bitumen, and synthetic crude oil (SCO). Bitumen is raw oil sands, which needs diluents so it will flow in pipelines. SCO is upgraded bitumen refined into light crude oil, which flows freely and usually commands a premium price over bitumen. Conventional crude oil is produced and refined using traditional methods. Price discounts for Canadian produced oil are due to increased transportation costs, the lower quality of the oil and its special refining needs, and the absence of competition. This last concern is being addressed by the massive increase in the use of rail to move petroleum throughout North America, the reversal of existing oil pipelines or the retrofitting of natural gas pipelines to carry crude oil.

Since the late 1970s and early 1980s the North American oil market has moved from being highly regulated and highly politicised to a market characterized by high levels of regulation but largely non-political, where individual buyers and sellers of crude oil determine the terms of oil contracts, including prices and volumes transacted. Regulations help "to shape the relationship between state, citizens, and businesses. An effective regulatory policy supports economic development and the rule of law, helping policy makers to reach informed decisions about what to regulate, whom to regulate and how to regulate."[38]

With the FTA both Ottawa and Washington decided to abide by these daily decisions made by thousands of buyers and sellers of oil throughout North America.[39] Economist Andre Plourde points out that this ease of access initially allowed Canadian oil producers to seek additional markets in the United States, which in turn has caused Canadian oil exports to the United States to rise sharply since the FTA went into effect.[40] With the policy risk impediment of arbitrary government intervention out of the way – or at least greatly diminished – the oil industry, and domestic and foreign capital, felt much more comfortable making long-term, capital-intensive plans to develop further Canada's oil production capacity, especially the Alberta oil sands. Put another way, according to Plourde, the FTA's energy provisions have played a vital role in "increasing the costs of Canadian policy making," re-defining the limits of

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[38] The Organization for Economic Cooperation and Development, (OECD) "Regulatory Policy and the Road to Sustainable Growth" Draft Report (2010), 9.

[39] For example, in August of 2008 when the price of West Texas Intermediate Crude oil increased to almost $150/barrel neither Ottawa nor Washington intervened in the marketplace to lower prices.

[40] Andre Plourde, "The Changing Nature of National and Continental Energy Markets," in Canadian Energy Policy and the Struggle for Sustainable Development. Edited by Bruce Doern (Toronto: University of Toronto Press, 2005), 51-82. Monica Gattinger, "From Government to Governance in the Energy Sector: The State of the Canada-U.S. Energy Relationship," The American Review of Canadian Studies (Summer 2005), 327.

oil policy making in both Ottawa and Washington, and between Ottawa and Canada's oil producing provinces and Canada's domestic oil industry.[41]

[41] Andre Plourde in conversation with the author August 1, 2012.

Major Themes

Canada's Staples Economy

Canada's reliance on a resource-based economy and its importance to the nation in terms of revenue generated, jobs created, and royalties paid to fund other government spending has been a long-standing feature of the nation's political economy.[42] Due to its small population spread over a vast landmass, Canada historically lacked the economies of scale to compete with other global manufacturing markets. However, Canada has always had abundant natural resources. To this day Canada continues to enjoy and exploit its comparative advantages in the development, extraction, and exportation of its natural resources.

Because costs, prices, and returns are different for all nations, it makes economic sense to sell goods where you enjoy a comparative advantage while importing goods that you do not have such an advantage. Heckscher and Ohlin adapted David Ricardo's theory of comparative advantage arguing that all nations have factor endowments that they use to arrive at relative gains regarding trading relationships with other nations. These factor endowments include geographical features, such as: climactic conditions and natural resources, historical development and political stability; social and demographic issues; economic development; size and quality of the workforce and access to capital; entrepreneurial skills, and the freedom to pursue entrepreneurial activities.[43] This list of trade attributes will determine if a nation has an advantage worth pursuing. For example, in assessing the future of Alberta's oil sands, it is assumed that Canadian, and especially U.S., oil demand will needed to be satisfied from

[42] The Toronto Sun, "Economy depends on energy, mining, forestry, Oliver" (September 4, 2012). Minister of Natural Resources Joe Oliver stated that 1.6 million Canadian workers are currently employed in the resource sector, approximately 10 percent of all workers in Canada.
[43] Michael Porter, The Competitive Advantage of Nations (New York: Free Press, 1998), 56.

somewhere – and in this regard the oil sands continues to have some key advantages as a preferred supplier, such as geography.[44]

Historically, Canada's reliance on resource driven trade has had a profound impact on the evolution of Canada as a nation. Harold Innis was one of the first to write extensively about this form of uniquely Canadian economic development. It holds that Canada's culture, political history and economy has been decisively shaped by the exploitation and export of a series of "staples" such as fur, fish, wood, wheat, mined metals, and fossil fuels.[45] One of his most cited publications was an in-depth examination of Canada's fur industry. In this book, he explained how trade in this particular staple literally shaped the nation, "Canada emerged as a political entity with boundaries largely determined by the fur trade. These boundaries included a vast north temperate land area extending from the Atlantic to the Pacific and dominated by the Canadian Shield. The present Dominion emerged not in spite of geography but because of it."[46]

Writing in the 1920s and 1930s, Innis believed that Canada's reliance on exporting unfinished raw resources in the hopes of hastening its own economic development was wrong-headed. He believed that Canada's main trading partners, Great Britain and the United States, received Canada's raw resources and benefited disproportionally, since they received the extra-added benefit of turning that raw resource into a finished product, negatively affecting Canada's growth and development trajectory and balance of payments. Innis argued Canada secured these export markets at the cost of being caught in a "staples" trap. Innis identified three negative

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[44] Conference Board of Canada, "Getting the Balance Right: The Oil Sands, Exporting and Sustainability," (January 2010), 2.
[45] W.T. Easterbrook and M.H. Watkins, "The Staples Approach" in Approaches to Canadian Economic History (Ottawa: Carleton Library Series, Carleton University Press, 1984) 1-98.
[46] Harold Innis, The Fur Trade in Canada: An Introduction to Canadian Economic History (Toronto: University of Toronto Press, 1970), 393.

outcomes of staples-based economic development:[47] First, the reliance on staples involved more infrastructure expenditures at the expense of other areas of the economy, such as manufacturing. Second, the reliance on natural resources exposed Canada to international price setting. Third, this reliance increased Canada's technological backwardness. He concluded that because of this reliance on resources Canada's ability to mature past a staples-based economy was limited. Not surprisingly, Innis was somewhat pessimistic about Canada's long-term economic prospects. Innis was also instrumental in exploring major themes in Canadian economic history, such as how Canada developed differently than the United States, why its economy is more "immature" than that of the U.S., and how Canada developed a distinctive political culture.[48]

Unlike Harold Innis, William Archibald (W.A.) Macintosh, who first used the phrase "staples" at a 1922 conference with Innis in attendance, believed that a staples economy was a positive step in economic development. Macintosh felt that the staples economy was not the final destination for Canada's economy and a reliance on natural resources did not mean an economic development trap for Canada. Macintosh wrote, "Nothing is more typical of colonial development than the restless increasing search for staples which would permit the pioneer community to come into close contact with the commercial world and leave behind the disabilities of pioneer existence."[49] Whereas Innis was a pessimist about Canada's long-term reliance on the exploitation of resources, Macintosh was more optimistic and viewed a staples economy as being transitory. Macintosh, of course, was wrong about one thing: Canada's

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[47] Michael Howlett, Alex Netherton and M. Ramesh, The Political Economy of Canada: An Introduction (Don Mills: Oxford University Press, 1999), 81-86.
[48] Mel Watkins,"Harold Innis: An Intellectual at the Edge of Empire" Canadian Dimension (July 7, 2006). www.canadiandimension.com
[49] W.A. Macintosh, "Economic Factors in Canadian History (1923)" in Approaches to Canadian Economic History (Toronto: McClelland and Stewart, 1967), 4.

reliance on the discovering, exploiting and exporting of resources was not transitory, but remains a major component of Canada's economic development and political evolution.

The differing views of Innis and Macintosh continue to frame the debate over Canada's resource and export driven economy. While many in both government and industry agree Canada needs to exploit its natural endowment, others believe there is little difference between a staples-based economy and economic dependency or neo-colonialism.[50] This interpretation of Canada's unwelcomed dependence on natural resources gained traction in the late 1960s and early 1970s, coinciding with growing U.S. ownership and influence over Canada's economy. Today, however, Paul Kellogg concludes Canada's economic performance invalidates the staples-trap scenario. [51] He wonders how Canada could have become one of the most industrial, most affluent nations on earth, if the exploitation of staples was so inherently damaging to the long-term prospects of Canada. Echoing these sentiments is Queen's University economist Ian Kay, who concluded after looking at the resource sectors impact on the overall economy that the evidence seems to suggest that since 1970, resource specialization – especially when energy is included – has been closely associated with forces that have contributed to an improved economic performance in Canada.[52]

The reality is oil is big business in Canada and vitally important to its economic wellbeing. The Economist magazine estimated that, based on today's oil price, the dollar value of the recoverable oil reserves from Alberta's oil sands alone is $15.7 trillion dollars.[53] Canada

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[50] Michael Hart, A Trading Nation: Canadian Trade Policy from Colonization to Globalization (Vancouver, BC: UBC Press, 2002), 36.
[51] Paul Kellogg "After Left Nationalism: The Future of Canadian Political Economy," Paper presented to the 2003 meetings of the Canadian Political Science Association, Halifax, Nova Scotia. (April 30, 2003).
[52] Ian Kay "Resource Specialization and Economic Performance: A Canadian Case Study, 1970-2005," Canadian Public Policy (Vol. XXXV, No. 3. 2009), 331.
[53] The Economist, "Muck & Brass," Jan. 20th, 2012.

has become the globe's sixth largest producer of oil, currently producing 3.24 million barrels per day (b/d) of crude oil.[54] Since 1999 Canada has been the largest supplier of crude oil and refined oil products to the United States. In 2012, Canadian crude oil and petroleum products represented 28 percent of U.S. crude imports, or nearly 2 million b/d. [55]

Oil's Global Regulatory Architecture

Global power today comes through trade, as never before. Joseph Nye argues that power is simply "the ability to attain the outcome one wants." [56] If so, the pursuit of profit and the power of international markets have largely replaced military force as the weapon of choice in the pursuit of this outcome. After all, the Chinese have accomplished more commercially in a few decades than what the Soviet Union could have only dreamt of using military force.

Oil is one of the most necessary and valuable of all natural resources, essential for today's global economy and way of life. There is little doubt oil will remain a vital strategic commodity for the next few decades.[57] As a result, not surprisingly, oil is also one of the world's most closely controlled commodities. Yet, for such a valuable commodity, oil has no formal international regulatory framework, no international treaty that manages its exploration, distribution, and sale. Though the international oil industry does not have a single over-arching

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[54] Canadian Association of Petroleum Producers "2013 Crude Oil Forecast" (June 2013) www.capp.ca.
[55] EIA, "U.S. oil imports," www.eia.org.
[56] Joseph S. Nye, The Future of Power (New York: Public Affairs, 2011), 3-24.
[57] Vaclav Smil, Global Catastrophes and Trends: The Next Fifty Years (Cambridge: MIT Press, 2008), 75-82. Vaclav Smil, Myths and Realities: Bringing Science to the Energy Policy Debate (Washington D.C.: The AEI Press, 2010), 60-78. Robert Bryce, Gusher of Lies: The Dangerous Delusions of Energy Independence (New York: Public Affairs, 2008), 1-44. Leonardo Maugeri, The Age of Oil: What They Don't Want You To Know About the World's Most Controversial Resource (Guilford, Conn: The Lyon's Press, 2006) Robin M. Mills, The Myths of the Oil Crisis: Overcoming the challenges of Depletion, Geopolitics and Global Warming (London: Praeger, 2007), 1-15. Steven M. Gorelick, Oil Panic and the Global Crisis: Prediction and Myths (Oxford: Wiley-Blackwell, 2010). M.A. Adelman, Genie Out of the Bottle (Cambridge, Massachusetts: The MIT Press, 1995).

regulatory authority, the oil industry does have the organizational architecture in place to ensure that the oil market operates in a reliable and transparent manner.

Today, a well-organized, efficient, and well-functioning global crude oil market has developed. Annually the globe uses almost 90 million barrels per day of crude oil with little interest on the part of either buyers or sellers to interfere in the operation of this very efficient market. Oil is also a non-renewable resource, which once exploited cannot be replaced. Therefore, all oil-producing states, in order to prevent chaotic development and rapid depletion, raise government revenue, or to control oil pricing, intervene to various degrees. Despite their other differences, nations realize it is in their best long-term interests to be able to trade oil in an open and reliable fashion, bringing together buyers and sellers, based on mutual self-interest. Today, out of this shared economic self-interest have emerged a number of international institutions that now provide the "architecture" that plays a key role in the global oil industry.[58] Goldthau, Hoxtell, and Witte state there are three different types of institutions in the global oil industry.[59] First, are institutions that address potential market disruptions such as the International Energy Agency (IEA). This organization acts as a safeguard for member states against oil supply shortages caused by either disruption to the supply chain or through policy decisions. Second, there are those institutions that aid in creating transparency in the form of providing reliable and transparent data such as the International Energy Forum and the Energy Information Agency. For example, without accurate oil production data an efficient and transparent market would be compromised and buyers and sellers would lack the necessary

[58] Andreas Goldthau, Wade Hoxtell and Jan Martin Witte, "Global Energy Governance: The Way Forward," in Global Energy Governance: The New Rules of the Game, Eds. Andreas Witte, and Jan Martin Witte (Brookings Institution Press, 2012), 341.
[59] Ibid.

information to establish price discovery.[60] Finally, there are those institutions established to set standards and rules for oil markets or to set the trade rules between buyers and sellers. For example, the World Trade Organization and the Canada-U.S. Free Trade Agreement both provide ground rules for the liberalization of trade, the former as an international body, the latter as a bi-lateral trade agreement between Canada and the United States.

Canada's Continued Reliance on the United States for Trade

Over the years, Ottawa has looked to facilitate greater trade with the United States, looking to reduce transaction costs and simultaneously increase the benefits of cooperation while not being overwhelmed by the United States. After all, the relationship, according to every matrix, is massively asymmetrical. Canada's Gross National Product and population is approximately 1/10th that of the United States and the disparity in military capabilities is even greater. A free trade agreement between Canada and the United States was never going to completely level the economic or political playing field or change these asymmetrical realities. It would, however, help ensure Canada's economic well being by creating scales of economy for Canadian business that were not available domestically, creating economic efficiencies that would increase both national productivity as well as increase gross domestic product. Despite our close historical, economic, and cultural ties, Ottawa must still fight for the attention of U.S. lawmakers and especially the U.S. President.

[60] It is interesting for years, despite increased oil production; many industry experts have questioned OPEC's never declining oil reserve estimates. One of the best books on this subject is by the late Matthew Simmons, Twilight in the Desert (New York: John Wiley & Sons Inc, 2005).

Michael Hawkes has written about three competing perspectives that describe Canada-U.S. relations in the post-war era.[61] The first perspective is called "middle power" and was built around the notion that Canada could exert the most influence within the evolving new world order by joining every new international organization, becoming the epitome of multilateralism. Towards that goal, as we will see, Canada's involvement in the liberalisation of global trade played an important role in Canada's ascension to a leading global economic power. The competing perspective described Canada as a political and economic satellite to the United States, exporting raw resources to the U.S. Recognizing this, Ottawa, in turn, attempted to develop a special relationship with Washington characterized by "a pattern of exemptionalism and exceptionalism." This dependency perspective dovetails with the staples approach to explaining Canadian economic development, with all of its negative connotations about Ottawa's inability to pursue a truly independent set of national policies. There is a third perspective that holds that Canada was neither and has become a principal player in world affairs without either depending too much on multilateralism or on the United States. The most apt perspective would be a combination of "middle power" and "dependency on the United States," reflecting Canada's economic circumstances at the time.

[61] Michael Hawkes, "Introduction: Managing Canada-U.S. relations in Difficult Times," The American Review of Canadian Studies (Winter 2004), 593-602.

CHAPTER ONE: Canada's Oil Industry and the State

Early Days in Continental Oil Relations

Throughout the first half of the twentieth century, Canada depended on the United States for its oil needs. The Canadian petroleum industry started in Central Canada in 1858, a year before drilling success in Pennsylvania. Ontario's oil fields, however, soon showed a marked decline in production. In the United States production rose due to continued drilling success in Texas, Oklahoma, and California. At the same time, the importance of oil became apparent with the mass acceptance of the automobile in Canada and the United States and its need for gasoline. Recognizing the importance of oil to its economy, Washington and the producing states intervened in the oil market, controlling oil prices by controlling oil production. In the 1930s, protests from domestic oil producers led to the imposition by Washington of import duties and quotas on imported oil.[62] The question of having a readily available supply of oil now became a national policy issue for Washington. As a response to the overproduction of crude oil and the depletion of a valuable resource, Stanford economist Harold Hotelling in 1931 outlined a theory for pricing finite resources such as oil. He argued that having such valuable assets in the ground is as good as "money in the bank" and therefore should not be over-produced.[63] Domestically, more state governments increasingly became more involved in the oil markets. Internationally, for Washington this also meant using U.S. oil companies increasingly as an arm of U.S. foreign policy.[64] Meanwhile for Canada, U.S. oil companies, with their Canadian subsidiaries, became

[62] "Royal Commission on Energy, Second Report," Government of Canada, (1959), 39.
[63] Harold Hotelling, "The Economics of Political Economy," The Journal of Political Economy Volume 39, Number 2 (April 1931), 137-175.
[64] The best examples of direct U.S. oil company/government involvement in the affairs of oil producing countries are that of Saudi Arabia, Iraq, and Iran. The available literature on this subject is both plentiful and rich. Besides

the backbone of Canada's oil industry and controlled the vast majority of Canada's oil production, wielding both investment capital and political influence.

The strategic importance of oil first became apparent during the Great War, but even more so during the Second World War when a nation's economy and its military capacity largely depended on vast amounts of refined products, gasoline, and diesel.[65] It is doubtful the United States would have risen to superpower status following the Second World War if it was not already the world's largest producer of oil. However, following the war and massive demobilization, U.S. domestic oil production no longer kept up with the rapidly growing domestic oil demand and the United States became a net oil importer. Despite still being the world's largest oil producer -- in 1952, U.S. crude oil production still accounted for over 50 percent of the world total oil production – with 44 percent from Texas alone[66] - the U.S. still required growing amounts of imported oil. This prompted a U.S. policy of favouring cheaper imports while increasingly husbanding valuable domestic oil reserves. In response, the United States began to import increasing large quantities of oil from Venezuela.

Canada's oil production in the immediate post-war period was very small, still using coal as its primary energy source, and depending heavily on U.S. oil imports to satisfy its growing transportation needs. For example, in 1946 Canada's total oil production was 21,000 b/d.[67] However, Canada's oil production was about to undergo a massive change following Imperial Oil's oil discovery at Leduc, Alberta, in 1947. The next ten years was a period of steady growth

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Daniel Yergin's The Prize (see bibliography), two other books are noteworthy: Rachel Bronson, Thicker than Oil (Oxford: Oxford Press, 2006) and Andrew Scott Cooper's The Oil Kings (New York: Simon & Schuster, 2011).

[65] Rick Atkinson, The Guns at Last Light: The War in Western Europe, 1944-1945 (New York: Henry Holt and Company, 2013). Note: It took at times 250,000 b/d to operate a single U.S. motorized division in Europe during 1944-45. At the end of the war, the U.S. alone had almost 90 divisions in the field.

[66] EIA, www.eia.org.ca

[67] André Plourde, "Canada," 88-120.

in Canada's "oil patch." In 1957, Canadian oil exports to the United States averaged 152,000 barrels per day.[68] In subsequent years, even larger oil discoveries in Alberta added to growing oil production and reserves. Canada's oil needs by 1957 could have been met by domestic production alone.[69]

Stephen Randall has written an excellent history and analysis of the U.S. oil and gas industry.[70] One of his primary focuses is the relationship between the state and private sector. Randall's book is useful in that it shows how both the U.S. government and industry worked together towards their respective goals of energy security and profit maximization. As a new oil-exporting nation, with growing oil reserves, Canada now assumed considerably more economic and strategic significance for the United States.[71] Washington increasingly looked at Canada's growing oil production and reserves as part of its own strategic oil requirements. Randall describes how in the years following the Leduc oil discovery, while in discussions between U.S. officials and senior Canadian politicians, such as C.D. Howe and Lester Pearson, Washington came to view North America as a single "strategic unit."[72] Washington assumed that, since Canada and the United States were wartime allies, further economic and defense integration seemed only prudent and natural. This sense of continental integration was evident in "The Report of the President's Materials Commission." Published in 1952, its recommendations describe a U.S. strategy to obtain from Canada and other "free countries" supplies of key strategic materials, including oil. Given the common defense strategy of North America through

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[68] "The Royal Commission on Energy," 11.
[69] Ibid.
[70] Stephen Randall, United States Foreign Oil Policy Since World War (Montreal & Kingston: McGill-Queen's University Press, 2005).
[71] Ibid., 265.
[72] Ibid., 266.

NATO and NORAD and the U.S. nuclear shield, Washington felt continental resources should also be shared during times of war rather than on a national basis.[73]

While securing oil supplies may have been a strategic necessity for Washington for Canada's oil producers the challenge was finding export markets for Canada's growing oil production. Thus, the challenges for the U.S. and Canadian governments were quite different. This security of demand, the need to find markets for Canada's oil, was in stark contrast to the United States, where security of supply and its diversification from multiple sources - the guaranteed flow of imported oil – has driven U.S. energy security policy in the post-war years.[74]

Industry needed to meet the challenges of growing oil production and Canada's geography and build the infrastructure necessary. In 1949, the Interprovincial Pipeline Company[75] with Imperial Oil, the Canadian subsidiary of today's Exxon-Mobil, as its largest customer, asked Ottawa to grant a construction permit to build a large-diameter oil pipeline from central Alberta to Regina. In 1953 the pipeline was extended to Superior, Wisconsin where crude oil was transported to Sarnia, Ontario refineries, by lake tanker. Extended again in 1957 to Toronto, this oil pipeline would become the worlds longest. Prior, in 1953, additional oil pipeline capacity to British Columbia came on-line when the Trans-Mountain Pipeline System was completed.[76] This 1,200 km pipeline connected Edmonton to the port of Vancouver, the only facility on Canada's West Coast that can ship crude by ocean-going vessel. Later this pipeline was extended to the state of Washington and to the terminals and refineries in Puget Sound.

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[73] Melissa Clark-Jones, A Staples State: Canadian Industrial Resources in Cold War (Toronto: University of Toronto Press, 1987), 30-31.
[74] EIA, "United States" www.eia.org Note: Today, the U.S. imports oil at volumes above 250,000 b/d from ten different nations. Eighty nations export oil to the United States. Canada has one oil export customer.
[75] Today known as Enbridge.
[76] Today known as Kinder Morgan Corporation.

Growing Canadian oil production coincided with increasing U.S. corporate interest and direct investment in Canada's oil industry. By 1955, U.S. companies controlled nearly 70 percent of Canadian oil production, with oil production growing significantly.[77] The significance of rising and reliable Canadian oil exports to the United States became apparent during the 1956 Suez Crisis. Canada still ranked well behind Venezuela as a supplier of crude oil to the United States, though its quick response was appreciated and noticed in Washington.[78] Canadian oil exports to the U.S. rose dramatically during the Suez Crisis, whetting the appetite of Canadian oil producers for increased entry to the U.S. oil market, then fell by a third, when the crisis subsided.

In 1955, in order to make cheaper imported oil less attractive for U.S. domestic refiners, Congress adopted a national security clause (Section 232), eventually cited as a rationale by every U.S. President from Eisenhower to Reagan to introduce quotas on U.S. oil imports.[79] Canada would later target this "U.S. national security" legislation in the FTA energy negotiations. To make matters more worrisome for Canada's oil industry, in July 1957 President Eisenhower announced the Voluntary Oil Import Program, or VOIP. The VOIP targeted cheaper Middle Eastern oil entering the U.S. and competing with domestic oil production. However, it also affected Canadian oil exports to the United States. Ottawa protested but received no exemption from this voluntary policy measure since the Eisenhower Administration did not want

[77] Paul Chastko, "Anonymity and Ambivalence: The Canadian and American Oil Industries and the Emergence of Continental Oil," The Journal of American History, (June 2012), 171.
[78] Ibid.
[79] Jeffrey P. Bialos, "Oil imports and National Security: The Legal and Policy Framework for Ensuring United States Access to Strategic Resources," www.law.upen.edu/journals. 243.

to anger Venezuela, their largest supplier of crude oil at the time, who also did not receive an exemption.[80]

In response to growing concerns voiced by Canada's independent oil producers over the VOIP, the Conservative government of Prime Minister John Diefenbaker struck a Royal Commission, chaired by Henry Borden, to examine the Canadian domestic oil and natural gas industries and review their respective export options. By this time, Western Canada was awash in domestic oil production with few export market prospects. In 1957, 49 percent of Alberta's oil production was shut-in, while a year later that number rose to almost 60 percent.[81] As Earle Gray concluded, "Alberta's oil producers had a glut of oil. They are investing more money, drilling more wells, finding more oil, but there was no export markets demand for the additional oil."[82]

The Borden Royal Commission looked at two oil export options as possible solutions to alleviate the glut in domestic oil production. One option was further integration into the vast U.S. oil market, the continental approach; the other option was Home Oil's proposal to construct a 200,000 b/d express oil pipeline from Alberta's oil fields to Montreal, providing feedstock for the region's refineries. At the time the major oil companies in Canada were subsidiaries of larger, mainly U.S., companies with major refining and marketing investments in Quebec who strongly opposed any oil pipeline from Alberta to Montreal. Foreign oil companies making presentations to the Borden Commission included Shell Oil of Canada, Imperial Oil, Texaco Exploration Company, Mobil Oil of Canada, California Standard Company and British

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[80] Tammy Nemeth, "Continental Drift: Canada-US Oil & Gas Relations 1958 to 1988," Paper delivered at the SHAFR 2004 Conference at Austin, Texas, (25 June 2004), 2.
[81] "Royal Commission on Energy," 89.
[82] Earle Gray, The Great Canadian Oil Patch: The Petroleum Era from Birth to Peak, Second Edition (Calgary: JuneWarren Publishing), 419.

Petroleum Canada.[83] The two options under review by the Royal Commission represented the views of two distinct corporate groups: the large U.S.-owned Canadian subsidiaries and the smaller Canadian independent oil producers, such as Home Oil. The foreign majors argued that since Alberta's oil was more distant and more expensive than the foreign oil readily available – from their own foreign operations - it would decrease their sales margins, resulting in lower profits. Meanwhile, by April 1959 Washington was alarmed enough to announce a Mandatory Oil Import Program, or MOIP, since voluntary oil import measures were not working. United States oil demand had increased almost 217 percent between 1954 and 1958 while domestic U.S. crude oil production only rose 6 per cent.[84] Inexpensive foreign oil was flooding the U.S. market. At the same time, the Canadian oil industry increasingly portrayed itself, as it does today, as being vital to U.S. energy security, as the following industry publication editorial from March 1959 illustrates:

> From a security viewpoint Alberta or Saskatchewan, oil is just as vital and just as available in any North American emergency as is the oil of Texas or California. Because of the geography of North America, the close economic relationship between Canadian and U.S. oilfields and major market areas and because of encouragement from governments of both countries on mutual defence grounds Canadian oilfields have been developed, American refineries have been, built in Puget Sound and the Midwest, and have been linked by pipeline across the international border. We firmly believe that U.S. oil import policy should recognize the special relationship of Canadian oil, not in the limited way now being done so far as the U.S. Midwest is concerned, but by regarding Canadian crude as part of the 'domestic stream', and exempting it from quotas in any part of the United States where it can be delivered more economically than U.S. Crude.[85]

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[83] Ibid., 166.
[84] Ibid., 244.
[85] Carl O. Nickle, "United States Adopts Mandatory Import Controls on Crude Oil and Refined Products," Oil Patch History JuneWarren-Nickles Group (March 11, 1959). www.junewarren-nickles.com/history

Ottawa eventually received an exemption to the MOIP but the episode did influence the Borden Royal Commission's final recommendations.[86] The Royal Commissions Second Report, released in August 1959, was delayed until after the MOIP exemption was announced.[87] The problem, as the Commission framed it, was "how best to increase the level of production of the oil industry in Canada to the point where such production will sustain a strong and healthy industry without adversely affecting the cost of energy to the Canadian consumer."[88] The Report's observations sound familiar, including the lack of infrastructure, lack of access to port facilities, the vast distances from oil field to oil refineries, whether the state should intervene or if private industry is best equipped to deal with the development of the oil industry and what oil export markets Canada should pursue. At the time Canada was a small global player in both the production and the exporting of oil. However, in relative terms Canada's oil industry had come of age, growing from a 1946 production of 21,000 b/d to a 1960s production of 545,000 b/d,[89] an increase of almost 2,600 per cent in fourteen years.

The Borden Royal Commission Report went to great lengths to explain the difficulties Canadian oil production had in accessing both domestic and U.S. markets.[90] The Report concluded that, "In our opinion, the use by U.S. refineries of overseas crude oils, owned by themselves or by their affiliates, has been partly responsible for the decline in exports of Canadian crude to the United States."[91] The Report also spoke at length about the possibility of a

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[86] As a by-product, the MOIP spurred on Middle Eastern oil exporters to create an oil cartel, the Organization of Oil Exporting Countries or OPEC.
[87] Tanya Whyte, "The Political Economy of Canadian Oil Export Policy, 1949-2002," M.A. Thesis (University of Alberta, 2010), 17. Note: The first Report, released in October 1958, looked at the natural gas industry and set about establishing a National Energy Board, or NEB to regulate the oil, gas and electricity businesses in Canada. It also had an advisory role in determining the future of the nation's oil industry.
[88] "Royal Commission on Energy," 133.
[89] Andre Plourde, "Canada," 88-120.
[90] "Royal Commission on Energy," 56-89.
[91] Ibid., 64.

future continental oil policy with the United States, though nothing came of it. In the final analysis, the main argument for not extending the oil pipeline to Montreal was that foreign feedstock, mostly Venezuelan oil, was cheaper for Montreal refineries. The Borden Report championed the establishment of a protected oil market west of the Ottawa River Valley, guaranteeing a ready market for Western Canadian oil.

The National Oil Policy

In February 1961, after some debate in Cabinet, Prime Minister John Diefenbaker announced the National Oil Policy or NOP, which reflected the Borden Report's major recommendations, giving Western Canadian crude oil a protected market west of the Ottawa Valley, while refineries east of this line continued to receive foreign crude oil. The NOP also set production targets, announced a general expansion of export sales, and imposed a voluntary plan to build up refinery capacity in Ontario to displace imports.[92] The National Oil Policy established the United States as Canada's sole oil export market and provided its domestic oil industry with a protected domestic marketplace.

Oil historian Tammy Nemeth often concentrates on the interpersonal relations between Canadian and U.S. leaders and its affect on Canada-U.S. oil trade relations. Nemeth concludes Prime Minister John Diefenbaker, because of a good working relationship with U.S. President Eisenhower, was establishing as a matter of national policy, the beginning of a continental oil relationship with the announcement of the NOP.[93] Over time, the NOP encouraged Canadian companies to build additional pipelines to the United States to access more refineries, such as an extension to Chicago. In doing so, according to Earle Gray, the Canadian oil industry was further

[92] Tanya Whyte, "The Political Economy of Canadian Oil Export Policy," 18.
[93] Tammy Nemeth, "Consolidating the Continental Drift: American Influence in Diefenbaker's National Oil Policy," Journal of the Canadian Historical Association, (Vol. 13 No. 1, 2002), 191-215.

consolidating its informal continental energy policy.[94] The overall result for Canada's oil industry was a dramatic increase in domestic oil production. During the ten-year duration of the National Oil Policy, from 1961 to 1970, Canada's annual oil production more than doubled.[95] At the same time, U.S. domination of Canada's oil industry was increasing, which for some was a troubling aspect of the NOP not addressed by the Diefenbaker government. By 1970 U.S. oil companies and their Canadian subsidiaries controlled 70 percent of petroleum production and 90 percent of products marketed in Canada.[96] In the years ahead, this concentration of Canadian oil assets in U.S. hands would begin to alarm Ottawa and become the focus of future policy initiatives.

The North American oil marketplace is not monolithic. Due to historical, geographical, and economic forces, a compartmentalized North American oil marketplace has emerged that moves oil in a north to south direction, not in an east to west direction. However, there are signs commercial interests have recognised an opportunity and have begun to reverse the flow in several oil and natural gas pipelines. There has also been a massive increase in rail-loaded cars over the past few years moving crude oil. Crude oil imports to the U.S. are delivered to one of five regional units called Petroleum Administration for Defence Districts (PADDs), a vestige from the Second World War. Currently, Newfoundland offshore crude goes to PADD 1 on the U.S. East Coast. Alberta crude goes to PADD 2, the U.S. Midwest, and to refineries in the Chicago area. This region receives 64 percent of all U.S. bound exports from Canada. The importance of the Keystone XL pipeline project lies in its direct access to PADD 3, the U.S. Gulf Coast, home of the world's largest concentration of oil refineries, many ideal for handling

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[94] Earle Gray, The Great Canadian Oil Patch, 429.
[95] Ibid.
[96] Paul Chastko, "Anonymity and Ambivalence," 173.

Alberta's oil sands bitumen. On the other hand, because of the NOP, Canada has long been a significant oil importer. Though Canada produces over 3 million b/d of oil (sixth globally), 2 million b/d are earmarked for export to the U.S. market. That leaves approximately 1 million b/d to satisfy a domestic need of 2.2 million b/d, leaving a shortfall of over a 1 million b/d that must be imported.

Not building an extension of the existing oil pipeline infrastructure to Montreal (and perhaps beyond) in the early 1960s was a missed opportunity for both Ottawa and the Canadian oil industry. To be fair, Canada's oil industry was still in its formative years and badly needed secure access to both U.S. capital and markets, but reaching tidewater would have alleviated many unforeseen future oil export constraints. Ottawa had formulated a policy that created a market distortion that continues to this day, however, the Canadian oil industry needed the certainty of a market. Canada's oil industry was now firmly on track for further integration into the U.S. marketplace. At the same time, "Canadian oil export policy was marked by a remarkable stability and consensus during this period."[97] This period of stability was about to end. As the 1960s gave way to the 1970s, the world's economy, global oil markets, and Canada-U.S. trade relations would undergo a fundamental change brought on by international events. Reacting to dramatically rising oil prices, and Canada suffering simultaneously from both recession and inflation, Canada's recently elected Prime Minister Pierre Trudeau was set to rewrite Canada-U.S. relations.

[97] Tanya Whyte, "The Political Economy of Canadian Oil Export Policy,"18.

Trudeau, the 1970s and State Intervention

Pierre Trudeau himself and others have written much about his years as Prime Minister (1968-1979, 1980-1984) and Ottawa's relations with Washington, especially regarding North American oil policies.[98] Decisions and debates from this period still reverberate today. Pierre Trudeau saw himself as a man of the world with foreign policies not determined by Washington.[99] During his early years as Prime Minister, Trudeau unilaterally reduced Canada's troop contribution to NATO in Europe, continued Canada's opposition to the U.S. war in Vietnam, established diplomatic relations with the People's Republic of China and continued friendly relations with Cuba's Fidel Castro, all of which disappointed Washington.[100] Trudeau perhaps worried less about the United States than any other prime minister of recent times did.[101] Not surprisingly, during Trudeau's early years Ottawa's relations with Washington became increasingly strained, culminating in Richard Nixon's 1972 speech announcing that the 'special relationship' with Canada was dead.[102]

Trudeau believed government had a role in redistributing national wealth. Trudeau increasingly viewed the Canadian petroleum industry, with its high level of foreign ownership, and the oil-producing provinces, growing wealthier from rising oil prices, as an irritant to Canadian national unity, and a threat to Ottawa's political authority. During his long tenure as Prime Minister, Trudeau wanted to move Canada away from its heavy trade reliance with the

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[98] Pierre Trudeau, Memoirs, (Toronto: McClelland & Stewart, 1993), 216-220.
[99] The Globe and Mail, "CIA secretly kept eye on Canadian economy, Pierre Trudeau, tar sands, mining during Cold War", (August 7, 2011).
[100] Pierre Trudeau, Memoirs, 216.
[101] Jeremy Kinsman, "Who is my neighbour? Trudeau on Foreign Policy," London Journal of Canadian Studies (18:2002/2003), 103-120.
[102] Bruce Muirhead, "From Special Relationship to Third Option: Canada, the U.S., and the Nixon Shock," American Review of Canadian Studies (Vol. 34, 2004).

United States, seeking a "third option," but to no avail.[103] Trudeau and many in his Cabinet were openly concerned about the growing influence the U.S. had on the Canadian economy, and ultimately Ottawa's ability to make independent policy. Trudeau, for his part, laments that since Canada shared a border with the United States, business people in Canada seemed to always default to the U.S. rather than foster potential overseas customers when it came to discussing commercial opportunities. Perhaps it had been too easy, for too many years, for corporate Canada, including the Canadian oil industry. Trudeau wrote, "I eventually came to the conclusion that Canadian business people have it so easy with the United States – where they already know the customers, the techniques, the language, and the geography – that they are a little lazier."[104]

Meanwhile, Washington was becoming much more involved in making policy decisions for its economy, especially for its oil industry. It became apparent that by the early 1970s the United States could no longer afford both guns and butter. The Vietnam War and social upheaval at home, a slowing domestic and global economy, and a growing trade deficit with Japan were giving the Nixon Administration few policy options, none good. In August 1971, President Richard Nixon unexpectedly announced wage and price controls. At the same time, Nixon announced with no warning to Canada, its largest trading partner, a flat ten percent surcharge on all worldwide imports into the United States – the so-called Nixon shocks. Most of these policy measures were cancelled by 1974; however, the U.S. government did leave oil regulated until Ronald Reagan's election in 1981. However, by artificially holding down domestic oil prices, Washington reduced incentives for additional drilling that would have a profoundly negative

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[103] The Third Option was an attempt by the Trudeau government in the 1970s to lessen Canada's trade dependence on the U.S. by increasing trade with Japan and Europe.
[104] Pierre Trudeau, Memoirs, 206.

effect on future domestic oil production. At the same time, they encouraged consumption, furthering U.S. demand for and the dependence on imported oil.[105]

A perfect storm was about to hit the United States oil market. U.S. domestic oil production peaked at close to 10 million b/d in November 1970 and then went into a production decline. Washington, realizing quickly the changing realities, immediately terminated the MOIP, realizing it needed as much Canadian oil as possible. Pro-rationing - the government sanctioned price-fixing effort by the Texas Railroad Commission to keep U.S. oil production and prices in equilibrium - was quickly abandoned. Imported oil became a larger component of U.S. oil needs, quickly ramping up to 6.2 million b/d, a 180 percent increase from the 2.2 million b/d in 1967.[106]

Plentiful and cheap energy made the West's postwar economic boom possible. Total world oil demand grew from just over 10 million b/d in 1950 to just under 50 million b/d by 1970. Despite this rise in demand, the price of crude oil remained in a very narrow band, ranging from $2.50 to $3.00 per barrel, with most of the historical increase accounted for by inflation.[107] However, this era of cheap oil ended abruptly with the Arab oil embargo of 1973-74. Unlike the previous Middle East crises, the Suez Crisis in 1956, or the 1967 Six Day War, U.S. oil production could no longer provide the oil required to bridge the gap between global supply and demand. The United States was no longer the world's "swing" oil producer. That coveted role now held by Saudi Arabia, a leading member of the OPEC oil cartel. A fundamental change had occurred in the global oil marketplace. The United States was now, in the industry vernacular, a

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[105] Bruce Beaubeauf, The Strategic Petroleum Reserve: U.S. Energy Security and Oil Politics, 1975-2005 (College Station: Texas A&M University Press, 2008), 11.
[106] Ibid.
[107] "Historical oil prices," www.wtrg.com

price taker, not a price maker and its energy security was imperiled.[108] By not having excess oil production capacity the U.S. had to accept that global oil prices were being set elsewhere and, in turn, that oil prices were greatly influenced by the OPEC cartel, which the U.S. viewed as having a pricing strategy that was counter to its national interests of low and stable oil prices.

The Yom Kippur War of 1973, the subsequent Arab oil embargo[109] and sudden and massive oil price increases caused a multi-year series of policy responses from Ottawa whose overall theme was massive and persistent state intervention in the domestic oil industry. However, Canada was not alone in this regard; many nations were struggling to deal with the new realities of the changing global oil marketplace. Prime Minister Trudeau had previously sought closer energy ties with the United States, from 1969 to 1973 in negotiations with the U.S. for a continental energy plan.[110] In the aftermath of the Arab oil embargo, Trudeau reversed course and suddenly announced on 24 November 1974 a gradual phasing out of oil exports to the United States by the end of 1975.[111] The official explanation given was Canada's domestic oil needs were to come first. At the time, Ottawa was concerned that domestic crude oil production would soon go into decline, similar to what had occurred in the United States.[112] The driving forces behind the decision to curtail Canadian oil exports to the United States, according to Tammy Nemeth, was a combination of a politicized bureaucracy, Trudeau's strategy of incrementally exerting federal control, and the political need to keep oil prices low to consuming

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[108] Alan Greenspan, The Age of Turbulence: Adventures in a New World (New York: The Penguin Press, 2007), 457.

[109] Several Arab oil producing nations imposed an embargo on shipments of oil to the United States, the Netherlands, Portugal, South Africa and Zimbabwe (then Rhodesia) as punishment for their support of Israel during the October, 1973 Yom Kippur War.

[110] Tammy Nemeth, "Canada-U.S. Oil and Gas Relations 1958 to 1974," (Unpublished Ph.D. Thesis, University of British Columbia, 2007), 267-269.

[111] Ibid.

[112] G. Bruce Doern, "Moved Out and Moving On: The National Energy Board as a Reinvented Regulatory Agency," in Changing the Rules: Canadian Regulatory Regimes and Institutions, Editors, G. Bruce Doern, Margaret M. Hill, Michael J. Prince and Richard J. Schultz. (Toronto: University of Toronto Press, 1999), 82-97. Note: Prior to 1987, the National Energy Board was legally required to ensure at least twenty-five years of oil reserves for Canadian use.

provinces.[113] Regardless, Ottawa's policy announcement to end Canadian oil exports to the U.S. caught Washington by surprise, later reflected in assurances in the FTA that forbid such unilateral government action. As global oil prices increased, the Trudeau government, like all oil exporting nations, sensed an opportunity. Tammy Nemeth argues that Trudeau believed that Canada should have all of its oil supplied internally at a controlled price, so the competitive advantage gained by Canada's industrial base, which happened to be the vote-rich provinces of Quebec and Ontario would be sizeable.[114] A further explanation of Trudeau's policy response to the oil crisis of the mid-70s could be that his Liberal minority government needed political support from the Left-leaning New Democratic Party, which advocated state intervention in the oil industry, reduced foreign ownership and the creation of a state-owned oil company. However, that argument only goes so far. Trudeau believed that Canada's oil resources were for all Canadians and that Ottawa was now redistributing that oil wealth. Trudeau believed the federal government best dealt with foreign domination of Canada's oil industry. If that meant facing off against Washington from time to time in order to make Canada's oil policies align themselves with the long-term interests of Canadians, not multinational oil companies and Washington, so be it. Journalist Bob Plamondon later observed, "Overtime, Trudeau's distain for capitalism in general and American influence over Canada in particular, superseded his sensible trade views and opposition to economic nationalism."[115] The first step towards that larger national vision was the announcement that Canada would phase out oil exports to the United States. Other announcements included establishing a made-in-Canada price for oil, a tax on oil exports to subsidize the suddenly more expensive imported oil Canadians east of the Ottawa River received, and the expansion of the oil pipeline to Montreal. Ottawa also announced the creation

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[113] Tammy Nemeth, "Canada-U.S. Oil and Gas Relations," 273.
[114] Tammy Nemeth, "Continental Drift," 11.
[115] Bob Plamondon, The Truth About Trudeau, (Ottawa: Great River Media Inc, 2013), 259-268.

of a state oil company, called Petro-Canada, and the establishment of the Foreign Investment Review Agency (FIRA) to monitor and if need be, prevent foreign takeovers of Canadian oil or related companies. To some degree, all of these policies raised the ire of Washington, which would ensure that such arbitrary and seemingly anti-American policies were made more difficult to introduce in the future. Adding to Ottawa's worries was that, unlike the late 1950s and 1960s, the Canadian oil industry had not encountered the drilling success of earlier years. Canada's oil industry increasingly became preoccupied with Canada's Arctic region, causing drilling activity to plummet in Western Canada, but found mostly natural gas, very far from any commercial markets. Unlike the United States, Canada had not found a Prudhoe Bay, the massive 1968 Alaska oil discovery.

The National Energy Program

From Washington's perspective, Pierre Trudeau's oil trade policies during the 1970s were intrusive and anti-American, but they were only a harbinger of what lay in store when he returned to power in 1980 with a majority government and a further mandate for change. Trudeau again had the oil industry, especially foreign oil companies, in his political crosshairs. During the previous year's election campaign, Trudeau, setting the tone for his campaign, accusing Conservative Leader Joe Clark of being a "dupe of the Western premiers and the multi-national oil companies and pledged a renewed role for the government in the economy."[116] Signalling his intentions in Halifax, Trudeau alluded to energy becoming part of a much larger national economic strategy, forming the core of any industrial or regional development approach.[117] Following his electoral victory Trudeau wanted to harness Canada's staples-based

[116] Jan Krouzil, "Canada's Free Trade Policy Experience," 81.
[117] Larry Pratt "Energy: The Roots of National Policy," Studies in Political Economy (April 1986), 30.

economy for the benefits of all Canadians. However, since the 1970s, Canada's resource sector had been under enormous market pressure, with increased worldwide competition and technological innovation in other parts of the world eating into earnings and lowering profit margins for Canadian-based companies. According to Jan Krouzil, this falling demand for some Canadian minerals made oil the only natural resource that could sustain Ottawa's strategy of resource-led development.[118]

Trudeau announced his grand future vision for Canada's oil industry, the National Energy Program (NEP) during the federal budget speech in October 1980. The primary goal of the NEP was to achieve energy self-sufficiency in Canada by 1990. Towards that goal, and predicated on rising oil prices to pay for various federal subsidies, Finance Minister Allan MacEachen announced a number of sweeping policy measures meant to transform the Canadian oil and gas industry. The NEP would "Canadianize" its oil industry by reducing foreign ownership, while collecting additional tax revenue for the federal government to pay for the NEP, while neutering the growing political power – and coffers – of the oil producing provinces in Western Canada, especially Alberta and Saskatchewan. The cost was estimated to be $13 billion dollars.[119] Making Canada energy self sufficient by 1990 meant stopping oil exports to the U.S. after that time.[120] The NEP would also promote further oil development in the frontier regions, referred to as the Federal Lands, where the federal government owned the mineral rights. Ottawa announced the Petroleum Incentive Program (PIP), which were federal government subsidies for oil exploration distributed to oil companies according to their degree of Canadian ownership. One of the main policy tools Ottawa had at its disposal was the state-owned oil company Petro-Canada.

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[118] Ibid., 73.
[119] Earle Gray, The Great Canadian Oil Patch, 451.
[120] Tammy Nemeth, "Continental Drift," 27.

Under the NEP Petro-Canada was automatically entitled to a 25 percent stake in all resource plays on the frontier lands, which lay outside the jurisdiction of any province. As mentioned previously, in 1975 the Trudeau government, like many other OECD nations such as the U.K. and Japan, reacted to the 1973 Arab oil embargo and the ensuing oil crisis by creating a state-owned oil company. Petro-Canada was to be Ottawa's "eye on the petroleum industry" during this period of upheaval in Canada's oil industry. Initially, the new Crown Corporation's assets consisted only of the federal government's share of the oil sands company Syncrude and the Arctic oil explorer Pan-Arctic. However, the federal government quickly expanded the company by purchasing the Canadian assets of large foreign-owned oil companies, such as Atlantic Richfield in 1976, Petrofina in 1981, the refining and marketing assets of British Petroleum in 1983 and Gulf Oil in 1985.[121]

Edmonton immediately reacted negatively to the announcement of the NEP. Alberta Premier, Peter Lougheed announced oil production would be reduced by fifteen percent over the next twelve months. In addition, all further oil sands project approvals were to be withheld. Bumper stickers also began to appear that read, "Let the Eastern Bastards Freeze in the Dark." As for Washington's reaction, there has been a difference of opinion. Despite the heated rhetoric over the introduction of the NEP, numerous journalists and scholars have speculated that the real level of animosity created by the National Energy Plan and the impact it had on Canada-U.S. relations at the time was both limited and muted. Tammy Nemeth argues that, "Several accounts of the American reaction to the NEP have claimed that the U.S. was outraged and made heavy handed demands. This is an exaggeration."[122] Both Doern and Toner believe that Washington's

[121] Suncor purchased all the remaining shares of Petro Canada in 2009.
[122] Tammy Nemeth, "U.S.-Canada Oil-Gas Relations," 14.

reaction showed restraint and blew over quite quickly.[123] Finlayson and Haglund make the argument that the NEP needs to be viewed in tactical terms – as a special response to a specific event – rather than a seismic shift in Canada's oil policies or its relationship with the United States, and that both Ottawa and Washington understood this.[124] However, Brian Bow is probably closer to capturing the atmosphere of the times when he argues that Washington was actually very upset and wanted restitution. Bow states, "U.S. officials privately signalled to their Canadian counterparts that they were considering several linkage options, and even highlighted some specific scenarios. [For example], access to lucrative American defense contracts might be smothered, the U.S. might be compelled to pursue a formal GATT challenge, or even massive trade retaliation."[125]

The NEP influenced future relations between Canada and the United States. While many other countries initiated a variety of policies similar to that of the NEP, from the perspective of Washington, Ottawa's unilateral policy actions were alarming because Canada had been one of their major sources of imported oil.[126] An internationally respected trade lawyer believes the United States had a strategic interest in ensuring the any investment restrictions were removed

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[123] Ibid., 34. Note: Considered one of the best books available in discussing and analysing the NEP is The Politics of Energy,[123] by G. Bruce Doern and Glen Toner. The authors give a thorough, though rather sympathetic analysis of the National Energy Program, still providing an excellent summary and analysis of the Canadian oil industry leading up to the NEP and its implementation. Unfortunately, the book was published too soon after the NEP was implemented so it lacks context regarding how the NEP directly affected the FTA.

[124] Jock A. Finlayson and David G. Haglund, "Oil Politics and Canada-United States Relations," Political Science Quarterly (Volume 99, Number 2, Summer 1984), 277.

[125] Brian Bow, The Politics of Linkage: Power, Interdependence and Ideas in U.S. Canada Relations (Vancouver: UBC Press, 2008), 102-127. Note: Bow discusses how Canada's special relationship with the United States has evolved to the point that while Canadian affairs still do not register in Washington the U.S. still treats Canada differently from other countries. Bow believes if Canada is to achieve more diplomatic and commercial success with the United States it will have to give up policy levers in return, similar to what occurred during the FTA negotiations.

[126] By 1983, Canadian oil imports had fallen to 28 percent of their 1973 level. www.capp.ca Both the United Kingdom and Japan, for example, created state-owned oil companies during this time.

and that all future restrictions were prevented from being introduced.[127] Future Prime Minister Jean Chretien agrees that Washington was indeed unhappy with the NEP and states that while acting as Minister of Natural Resources during the implementation of the NEP, "They said this 'back-in' clause was retroactive expropriation."[128] In his memoirs, even Pierre Trudeau candidly remarked that, "The American-owned multinational oil companies, meanwhile, were so unhappy with our policy of Canadianization that even Ronald Reagan raised it with me at a lunch. I told him, 'Look I won the election on this platform. I don't tell you how to set figures for your military budget; you can't tell me that I can't have my own energy policy in Canada."[129] The Liberals acknowledged the negative U.S. reaction to the NEP, understood that Washington was very upset, but felt such an interventionist policy was in Ottawa's best political interests. Years later the U.S. policy response ultimately found an outlet in the FTA`s energy provisions, a quid pro quo for Canada`s request for a free trade agreement between the two nations.

There is little denying that the National Energy Program was an attempt to politically and economically re-engineer the relationship between Ottawa, the oil producing provinces and the oil industry in Canada. It was also an attempt to reshape the oil marketplace, reducing the influence of large foreign owned oil companies. At the time, the NEP enjoyed widespread public support outside of the oil producing provinces. The majority of Canadians lived in the oil consuming provinces and felt the oil producing provinces had a comparative economic advantage owing more to geology and geography than anything else.

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[127] Anonymous interviewee #2.
[128] Jean Chretien, Straight From the Heart, (Toronto: Key Porter, 1985), 164.
[129] Trudeau, Memoirs, 292.

The Carter Administration at the time, if not embracing, tolerated Trudeau's policies.[130] However, when Ronald Reagan became president in early 1981 with a free market, small government economic platform, it was not surprising that his in-coming Administration took special note of the anti-American policies of the NEP and its "expropriation, confiscation or high jacking of U.S. owned oil assets and ensured they would be addressed in the future."[131] Within a year the NEP was watered down by subsequent policy announcements between Ottawa and Edmonton. There were further policy changes in 1982 to the NEP that placated Washington.[132] In the end, a collapse in world oil prices throughout the 1980s, and not only the political atmosphere in Canada caused the demise of the NEP. For example in 1986 alone, the price of crude oil fell from $28 to $7.35.[133] Thus, the upward trajectory in global oil prices envisioned by the Liberals never materialized, so neither did the economic foundation for this national strategy. Not debatable was the damage done to both Alberta and Canada's oil industry. In Paul Chastko's words, "The NEP gutted the Alberta oil patch and severely jeopardized the country's energy future."[134] The NEP illustrated the danger in forming a national energy policy with little to no dialogue between the Prime Minister's Office, key ministries, oil-producing provinces, domestic oil industry, and the United States, your largest trading partner. "If Ottawa consciously wanted to design a policy to wreck havoc from an economic, environmental, and national unity perspective, the NEP was the ticket."[135] Even today, the NEP continues to stir strong emotions. The NEP was a pivotal event in Canadian history. It is a cautionary tale and an example of the state over-reaching when discussions of national energy strategies arise.

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[130] Doern & Toner, The Politics of Energy, 35. Note: President Carter had proposed his own version of a National Energy Plan for the United States. It is also worth noting that President Carter was a pallbearer at Trudeau funeral, underscoring their close ties.
[131] Brian Bow, The Politics of Linkage, 112-127.
[132] Ibid.
[133] Earle Gray, The Great Canadian Oil Patch, 453.
[134] Paul Chastko, Developing Alberta's Oil Sands, 194.
[135] Bob, Plamondon, The Truth About Trudeau, 279-274.

The Liberals were defeated in the 1984 federal election by the Brian Mulroney-led Conservative Party and a new direction for Canada's oil industry was set in motion. Mulroney, and Pat Carney, his choice as Minister of Energy, Mines, and Resources, were set about to further deregulate the Canadian oil market beginning with the dismantling what was left of the NEP.[136] Taking effect April 1 1985, a Western Accord between Ottawa and the four Western provinces was signed ending eleven years of controlled prices and immediately removed five federal taxes.[137] Canada's domestic oil industry and the producing provinces got what they had wanted, a return to where the marketplace mattered, where companies could make long range plans and where industry and government together would move forward, working together. At the time, Energy Minister Patricia Carney delivered a challenge to Canada's oil and gas sector. "We delivered, now it is industry's turn. With deregulation of crude prices and export controls and with the scrapping of numerous levies, taxes and charges, I am challenging the industry. It's a clear cut message - go and find the oil and gas and sell it on the open market."[138] Later that same year Ottawa also signed a new offshore oil revenue sharing agreement with Labrador and Newfoundland called the Atlantic Accord. The pendulum had swung from state intervention to a more market-driven approach, with policies that helped enshrine these changes and, in some cases, was simply Ottawa getting out of the way of industry and the oil producing provinces.[139] In other words, Ottawa wanted industry and not government to take a more active role in maintaining a reliable and transparent oil marketplace.

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[136] Pat Carney became Minister of International Trade in late 1986 and was instrumental in the negotiation of the FTA.
[137] Gray, The Great Canadian Oil Patch, 453.
[138] David Finch, Pumped: Everyone's Guide to the Oil Patch (Calgary: Fifth House, 2008), 79.
[139] Tammy Nemeth, "Pat Carney and the dismantling of the National Energy Plan" History & Classics" (University of Alberta: Vol.7, 1998), 87-123. Note: Pat Carney stated, "To me the provinces owned the resources. Therefore the object was to get the Feds out."

The Conservative's drive to further deregulate Canada's oil industry, however, did not mean an end to Ottawa's interest in the oil industry or its ability to intervene, if it deemed necessary. In addition to retaining all of its major policy levers, Ottawa ensured that an escape clause existed in the form of a force majeure clause even with these pro-market changes. Ottawa retained the final say in protecting Canadian consumers in case of extraordinary fluctuations in world oil prices.[140] Nonetheless, the Conservatives continued to chip away at the Liberal's interventionist legacy. Indicative of the Mulroney government's new philosophy was the termination of FIRA, renaming it Investment Canada, and a changed mandate to facilitate foreign investment rather than blocking it.[141]

Earlier in 1983, midway through Trudeau's final mandate, with the Canadian economy suffering through its worst recession in decades, the Liberal government announced a Royal Commission to examine all aspects of Canada's economy. Despite a reputation for partisanship, once in power Mulroney allowed the Royal Commission to complete its work. Its mandate was to bring forward policy recommendations that would benefit Canada's economy in the future. It was felt previous economic policies implemented by the federal government over the previous decade and a half had not met with sufficient long-term success. Canada was not alone; the entire OECD was in the midst of a serious economic downturn. Between 1974 and 1983 the rate of annual growth in real GDP for OECD countries was 2.1 per cent, inflation averaged 9.7 per cent, and unemployment about 6 percent.[142]

Chaired by former Liberal Natural Resources and Finance Minister Donald MacDonald, the Royal Commission's final report was entitled, "A New Direction for Canada." The Report

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[140] Tammy Nemeth, "Continental Drift," 15.
[141] The last vestige of the NEP did not end until 1989.
[142] Economist, (September 22, 1984), 48.

did not disappoint. The 1985 Royal Commission Report concluded, "The success of the goal of economic renewal in Canada will thus depend, in no small way, on the nature of Canada's ties with the United States" and called for, among its many recommendations, a free trade agreement with the United States.[143] This was a dramatic departure from previous government policy. Unconvinced that Canada's economic future laid with multi-lateral trade agreements, such as the GATT, the Harvard-educated MacDonald spoke of "opportunities that can be best realized bilaterally."[144] The Report also had some observations, comments, and recommendations that would later provide the framework in the yet to be concluded FTA's energy chapter. Since the chair of the Royal Commission was an ex-senior Liberal cabinet minister the Report's findings carried extra weight, which was not lost on Mulroney. For example, "the lesson to be learned in the energy field from the 1970s and 1980s is that the price mechanism does not work" and "The designers of policies for the future would do well to build on this lesson."[145] The Report's recommendations also provided political cover for the Conservatives who were already contemplating asking Washington to commence free trade talks. It was ironic that MacDonald, who Trudeau had considered a very competent minister, had thoroughly denounced Trudeau's own policy of state intervention in the oil industry during the 1970s and early 1980s.[146] MacDonald recommended a new direction for Canada. In the past economic reliance on the United States has resonated with Canadians only when its economic prospects were the dimmest; the early 1980s was such a period.

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[143] Government of Canada, "Royal Commission on the Economic Union and Development Prospects for Canada," (1985), 247.
[144] Ibid., 296.
[145] Ibid., 93.
[146] Trudeau, Memoirs, 196.

CHAPTER TWO: The Canada-U.S. Free Trade Agreement

A vitally important aspect of Canada's relationship with the U.S. is trade. Canada and the United States share a 9,000 kilometers border and conduct almost $2 billion Canadian dollars in trade every day, creating the most trade intensive relationship in the world. However, and this is crucial, the trade relationship is not equal. Canada is far more dependent on the U.S. market than the United States is on Canada, except for energy. Twenty percent of Canada's GDP comes from exports to the United States, whereas only 2.5 percent of U.S. GDP is dependent on exports to Canada.[147] Moreover, the significance of Canada's reliance on trade with the United States becomes readily apparent when the United States has a recession, which has a chilling effect on the Canadian economy. Thus, managing its relationship with Washington has always been a pre-occupation for Ottawa.

Since Prime Minister John A. Macdonald's National Policy of 1879 Canadian economic policies towards the United States has often involved high tariffs. Tariffs were the trade policy tool of choice and used to protect Canadian industry from cheaper U.S. imports. However, one of the consequences of these high tariff walls was the setting up of foreign owned Canadian subsidiaries that increased the degree of foreign ownership and control of the economy. Nonetheless, free trade with the United States has always been a policy option for Ottawa. However, the concept of free trade had to be sold politically to a sceptical Canadian public, fearful of the military, economic, cultural, and social preponderance of the United States. Thus, free trade with the United States has long been a feature of Canadian political discourse. Given

[147] "Commercial Relations," Foreign Affairs, Trade and Development Canada, www.international.gc.ca

its longstanding political and economic ties to Britain throughout much of its history, from pre-U.S. Revolution days to the start of the Second World War, Canada has had a conflicted attitude towards the United States. On the one hand, Canada wanted to emulate the economic success of the United States, without forfeiting what was different about Canada, that is, in the words of Richard Gwyn, "not being American."[148] However, the sheer preponderance of Washington's power and reach was most alarming and only grew in the post-war period. "The rest of the world," describes Barry Cooper, "reacts to America, fears America, lives under American protection, envies, resents, plots against, and depends on America. Every other country defines its strategy in relation to the United States."[149] No other nation, except for Mexico, feels the full weight of America's asymmetrical relationship more than Canada. Free trade with the U.S., therefore, was not a straightforward proposition but an existential one for Canadians and Canadian lawmakers. Resigning himself to the reality of the situation, Prime Minister Wilfred Laurier summed up his personal feelings by stating, "We can neither neglect nor retreat from our relationship with America. We can only move forward and seek to shape it to our purposes."[150]

In 1854, London and Washington had signed a reciprocity treaty until abrogated by the U.S., partly due to Britain's support of the Southern Confederacy during the Civil War. Until Washington withdrew from the Treaty, however, the years of reciprocity with the U.S. had "been a boom period for Canadians, and the new policy was less vulnerable politically than commercial union."[151] Laurier's Liberals attempted another free trade agreement in 1911, only to have it rejected by the Canadian electorate. In 1935, Ottawa and Washington signed a series of tariff

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[148] Richard Gwyn, Nation Maker: Sir John A. MacDonald: His Life, Our Times: Volume Two: 1867-1891 (Toronto: Random House, 2011).
[149] Robert Cooper, The Breaking of Nations: Order and Chaos in the Twenty-First Century (Toronto: McClelland & Stewart, 2004), 45.
[150] Brian Lee Crowley, Jason Clemens and Neils Veldhuis, The Canadian Century: Moving Out of America's Shadow (Toronto: Key Porter, 2010), 160.
[151] Richard Gwyn, Nation Maker, 555.

agreements followed by a more ambitious trade agreement in 1938. Following the Second World War, Harvard-educated Prime Minister William Lyon Mackenzie King, personally wanting to see closer trade ties, initiated free trade negotiations with Washington, which were successful, but in the end King thought better of it politically and the document went unsigned.[152]

Canada – U.S. Trade Relations

By the early 1980s, many Canadian politicians, including Brian Mulroney and Ontario Premier David Peterson, continued to be either fearful or sceptical about the benefits Canada would derive from a free trade agreement with the United States. For example, during the 1983 Conservative Leadership campaign Brian Mulroney warned his audience, "Now there's a beaut for you. Now there's a real honey – free trade with the Americans. Free trade with the United States is like sleeping with an elephant. It's terrific until the elephant twitches, and if the elephant rolls over, you're a dead man."[153] Many believed that Canada was simply too insignificant a nation economically to be treated as an equal in negotiations by the United States. For instance, Donald MacDonald recalls Pierre Trudeau once warning him, "open our markets to them, and they will eat our lunch."[154] However, during the early to mid-1980s Canadian attitudes changed, coinciding with the nation's deepest recession since the 1930s. This coincided with Ottawa's fear of growing protectionist sentiment in the U.S. Congress. It was once again an appropriate time to entertain free trade with the United States.

Today, a free trade agreement between Canada and the United States would likely be unsuccessful. The United States is much larger than Canada using any measurement imaginable,

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[152] Diane Francis, Merger of the Century: Why Canada and America should become one country (Toronto: Harper Collins, 2013), 16-17.
[153] Peter C. Newman, The Secret Mulroney Tapes: Unguarded Confessions of a Prime Minister (Toronto: Random House, 1995), 181-182.
[154] Diane Francis, Merger of the Century,166.

military, economic, and cultural, with one exception: energy. Moreover, importantly Canada is well down Washington's priority list. Brian Bow believes that Canada did have a special relationship with the United States in the immediate post-war period, but since 1970 this has been replaced by a more hardnosed approach based on self-interest rather than our shared values about our collective place in the world.[155] However, the mid-1980s brought together two unique men at a unique time in their nation's histories, with similar visions about the role of government and a mandate from voters for change. The personal relationship and political convictions of Brian Mulroney and Ronald Reagan greatly influenced the FTA. Leslie Pal, in a chapter devoted to the research of G. Bruce Doern, made the point that, "At its core the policy process is driven by power from above, from the political level, in that this is the level (and the players) that sets agendas, priorities, and broad allocation of resources."[156]

U.S. President Ronald Reagan had long been an advocate of "small government" and a strict adherence to the principles of "free and fair trade."[157] Together, Mulroney and Reagan were the driving force behind free trade. However, it was still quite a departure from their past policies.[158] Historically, Reagan's Republican Party and Mulroney's Conservatives did not advocate free trade and were more apt to be protectionist using high tariff walls to protect domestic manufacturing. For example, the Republicans introduced the Smoot-Hawley Act of 1930 in the U.S. The Conservatives introduced the National Policy of 1879, with its high tariff walls, to protect Canadian industry from cheaper imports. Still, increasingly from Ottawa's

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[155] Brian Bow, The Politics of Linkage: Interdependence and Ideas in US-Canada Relations (Vancouver: UBC Press, 2008), 2.
[156] Leslie Pal, "The Accidental Theorist? Key Themes in G. Bruce Doern's Approach to the Policy Process," in Policy: From Ideas to Implementation, eds. Glen Toner, Leslie A. Pal, and Michael J. Prince (Montreal & Kingston: McGill-Queens University Press, 2010), 55.
[157] Ronald Reagan, Ronald Reagan: An American Life (New York: Simon & Schuster, 1990), 355.
[158] Brian Mulroney, Memoirs, 577. Note: Brian Mulroney reminds readers in his memoirs that James Baker would later write, "The ultimate agreement was a testament to the vision, the courage and the political will of these two great leaders."

perspective, bilateral trade negotiations with the U.S. began to look like a viable policy alternative.

Brian Mulroney underwent a personal transformation that led him to believe free trade with the United States was worth the political and economic risks. The status quo was not a welcomed option. At the very least, Mulroney was determined to get Canada-U.S. relations back on a solid footing, a marked departure from the policies of the Trudeau years. "And we would not," Mulroney stated, looking back, "have the anti-Americanism in our foreign policy that ran rampant in Trudeau's final term. Clearly he had an agenda, and he was acting on it."[159] Mulroney does admit in his memoirs about his initial scepticism and reluctance to negotiate free trade with the United States and how that was alleviated somewhat by his budding friendship with President Reagan and subsequent conversations he had with his Minister for Foreign Affairs, Joe Clark, and Alberta Premier, Peter Lougheed.[160] In addition, becoming quite influential at the time was Derek Burney, a senior civil servant, whose views Mulroney increasingly sought out.

Gordon Ritchie, Canada's Deputy Head Negotiator during the FTA negotiations, stated years later in an interview with the author that he still, after many meetings with Mulroney, did not fully understand what ultimately prompted the prime minister to take the leap.[161] There is an element of mystery regarding why Mulroney made his fateful decision because, for just like Trudeau with the NEP, he kept his own council when deciding to move ahead with major policies.[162] However, once he decided to move forward Mulroney knew that to have a successful negotiation there would have to be tradeoffs. He undoubtedly realized that having a comprehensive trade agreement with the United States would lessen the scope for future

[159] Ibid., 201.
[160] Ibid., 384.
[161] Gordon Ritchie in conversation with the author, February 4, 2013.
[162] G. Bruce Doern & Brian W. Tomlin, Faith & Fear, 272-276.

government policy, especially in the energy sector. This was not only acceptable, but a major goal of his. Michael Hart is Professor and the Simon Riesman Chair in Trade Policy at the Norman Patterson School of International Affairs at Carleton University, and has written extensively about Canadian trade policy and participated in the FTA negotiations. Hart believes one of Mulroney's primary objectives was to make the Canada-U.S. oil marketplace far more market driven and not policy driven.[163]

However, first there were procedural realities to deal with. Mulroney had a majority in Parliament, effectively granting him carte blanche in trade negotiations. President Reagan, on the other hand, could do nothing without the blessing of Congress. According to the U.S. Constitution, Congress, not the Executive Branch, has the final say over regulating trade with foreign powers. In recent times to get past this obstacle, the Executive has sought "fast track" authority with firm deadlines and this was the case with the FTA. However, even with a successful free trade negotiation behind him President Reagan would still require Congress to approve the trade deal.

From Reagan's memoirs, despite his obvious friendship with Mulroney, one does not gain a sense of urgency, or even noteworthiness, regarding a free trade agreement with Canada.[164] Perhaps this was because Brian Mulroney had far more to lose politically than did Reagan. Canadian trade issues simply did not resonate with U.S. lawmakers or voters. Most had no idea, for example, that Canada was their largest trading partner or a major supplier of oil.[165] On the other hand, for many Canadians the idea of negotiating a free trade agreement with the

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[163] Michael Hart in conversation with the author, July 4th 2012.
[164] Ronald Reagan, An American Life, 350-355.
[165] This lack of appreciation by the U.S. for the scope of Canada-U.S. trade continues to frustrate Canadians and Canadian policy makers to this day.

United States was, if not fearful, at least a cause for concern, resulting in a very polarized public debate, with Prime Minister Mulroney front and centre, politically exposed and vulnerable.[166]

In September 1985, Brian Mulroney announced Canada would commence free trade negotiations with the United States and named Simon Reisman to head Canada's trade delegation. Reisman had decades of experience in the civil service, helping represent Canada at the inaugural GATT Conference in 1947. He was also instrumental in negotiating the 1965 Auto Pact Agreement with the United States and had risen to Deputy Minister of Finance before taking early retirement in 1975 to join the private sector. The ex-artillery officer was as knowledgeable on trade matters as he was crusty and demanding of others, traits Mulroney was looking for when negotiating with the United States.[167]

As Canada's Head Negotiator during the FTA, it is helpful to reflect on Simon Reisman's thoughts about government policymaking going into the FTA negotiations. After retiring from the civil service Reisman gave an indication of where he stood on Canadian public policy issues, such as trade in natural resources and any future trade negotiations with the United States, in a speech he gave in 1977 to The Canadian Club in Toronto. When discussing Canada's poor economic performance at the time, highlighted by a growing deficit caused in large part by massive government spending on social programs, Reisman stated, "No thinking Canadian would dispute the conclusion that Canada is in deep economic trouble or that major adjustments are required to resolve the problems of growth, employment, and inflation."[168] Like President Reagan and Prime Minister Mulroney in later years, Reisman advocated a smaller government

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[166] It is interesting that despite the FTA being one of Mulroney's greatest legacies he only devoted 15 pages to its negotiations in his 1,045-page memoir.
[167] Brian Mulroney, Memoirs, 564.
[168] Simon Reisman, "What's Wrong with Canada?," Notes for remarks by Simon Reisman addressing the Canadian Club in Toronto, (Monday, January 31, 1977) www.canadianclub.org.ca

that was more responsive. He stated, "[A]nd it involves a reduction of government intervention to enable the dynamic forces of the marketplace to play its role in laying the foundation for the renewal of strong economic growth in the future."[169] He spoke about how Canada's economic performance would be improved upon through trade. However, to enhance political and economic sovereignty an important ingredient would be trade agreements where "everything else – should be treated as negotiable: resources, education, language, culture, manpower policy, health, welfare, urban affairs, and communications – to name only a few."[170] Riesman believed that all energy products should be treated as any other good in future free trade negotiations. He also made a passing reference to a key Canadian bargaining strategy when he stated, "certainly we saw ourselves as a richly endowed storehouse of natural resources in a world that was growing increasingly short of them."[171]

Reisman came out of retirement and quickly put together a team called the Trade Negotiations Office (TNO), including Gordon Ritchie, another ex-deputy minister, as his Deputy. Reisman's immediate key staffers were kept to a minimum, though all having vast government experience in areas such as the GATT, the MacDonald Commission, Canada's automotive industry and two new areas of negotiation, trade in services and investment.[172] The TNO eventually grew to over one hundred assistant negotiators, issue specialists, policy analysts, and support staff.

Ottawa was abuzz. Not since the late 1940s and Canada's initial involvement in the creation of the GATT, had Ottawa been involved in such wide-ranging trade negotiations. Not

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[169] Ibid.
[170] Ibid.
[171] Ibid.
[172] Gordon Ritchie, Wrestling with the Elephant: The Inside Story of Canada-US Trade Wars (Toronto: MacFarlane, Walter & Ross, 1997), 63.

surprisingly, believes Michael Hart, many members of the public and media pundits wished to enter into the FTA debate without much background knowledge on trade issues.[173] This lack of knowledge regarding the nuances of trade negotiations when mixed with public unease about any dealings with the United States created a general sense of mistrust and fear about not getting a fair deal from the U.S. negotiators.

Mulroney himself became increasingly active behind the scenes during the negotiations. Ministers most often called upon over time for feedback included Minister of External Affairs Joe Clark, Finance Minister Michael Wilson, and Trade Minister Pat Carney. However, Carney's "mood swings" began to catch Mulroney's attention and she became increasingly marginalized.[174] In addition, Paul Tellier, Mulroney's Clerk of the Privy Council, undoubtedly was tapped for his expertise as a former Deputy Minister of Energy responsible for unwinding the NEP. Another important member of the Canadian negotiating team was Alan Gotlieb, Canada's Ambassador to the United States. However, perhaps the most important contributor, certainly by the last minute when negotiations had potentially broken down permanently, was Derek Burney, by now Prime Minister Mulroney's Chief of Staff and ex-senior civil servant. Burney proved to be instrumental in negotiating the final details of the trade deal with Washington when pitted against James Baker, Ronald Reagan's Treasury Secretary and former Chief of Staff. Baker was, according to Ritchie, "the unchallenged second-in-command of the Administration."[175] With Burney and Baker now directly involved, the FTA between Canada and the United States was finalized a mere 20 minutes before the deadline imposed by Congress.

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[173] Michael Hart in conversation with the author, July 4th, 2012.
[174] Brian Mulroney, 574
[175] Gordon Richie, Wrestling with the Elephant, 97.

Burney would later become Canada's Ambassador to the United States, while Baker later became U.S. Secretary of State.

The FTA's Energy Negotiations

The free trade negotiations between Canada and the U.S. themselves were long and often acrimonious.[176] All the Canadian participants' memoirs – Mulroney's, Burney's, Ritchie's and Hart's – do agree on two main points about the FTA negotiations. First, there was a consensus by the Canadian delegation that the U.S. negotiating team was either initially unprepared or non-committal to negotiate a broad-based free trade agreement with Canada. Brian Mulroney would lament, "It was increasingly evident that the United States was assuming that Canada was prepared to accept any deal, however bad."[177] Second, the U.S. Head Negotiator, Peter Murphy was out of his depth against the very experienced Simon Reisman and, perhaps more importantly, did not have the ear of the Reagan Administration, thus lacking the ability to make on the spot, timely decisions. However, Doern and Tomlin were less harsh regarding Murphy's negotiating demeanor, arguing his non-engaged approach reflected U.S. political realities at the time.[178] None of this should be surprising. Free trade, while important to Canada, hardly

[176] What is interesting in reading the memoirs from participants in the FTA negotiations is the bitterness that now exists between key members of the Canadian negotiating team. Ten years after the FTA was concluded, Gordon Ritchie, Simon Reisman's deputy negotiator, published his personal memoir, Wrestling with the Elephant: The Inside Story of the U.S. Trade Wars. Immediately the reaction to the book by his former colleagues was unanimously scathing. Both Allan Gotlieb and Michael Hart wrote book reviews criticising Ritchie's book as an example of self-promotion and claiming factual mistakes throughout. According to Gottlieb, some of the events Ritchie describes in the book did not even occur. For example, Michael Wilson "fumbles" at the negotiating table, Reisman is plain worn out by the end of negotiations, Allan Gotlieb is over anxious and so on. Simon Reisman was so upset at Ritchie's portrayal of him and his interpretation of events that he threatened legal action. However, despite these difference of opinions, Doern and Toner concluded in their book on the free trade negotiations that "Ritchie probably had the best handle on the FTA, with a detailed knowledge of both the individual issues and the connection between them, and afterwards he became one of its most articulate and thoughtful advocates." Seemingly, the only two participants not criticised in one form or another by anybody involved in the FTA negotiations were Prime Minister Mulroney and his Chief of Staff, Derek Burney.
[177] Brian Mulroney, Memoirs, 567.
[178] Doern & Tomlin, Faith & Fear, 279.

registered outside of the Beltway in Washington. Its possible failure was not going to be a career-ender for U.S. negotiators; the same was not true for the Canadian negotiators.

The FTA negotiations began in May 1986, with a Congressional deadline of midnight, October 3, 1987. The first few days were not auspicious. On the day following the first round of negotiations, the U.S. imposed an import tariff on cedar shakes and shingles. Canada, in turn, responded by imposing higher tariffs on books, computers parts, and a number of other manufactured goods. Ironically, this re-enforced for the Canadian negotiators the very need for a free trade agreement. Despite this setback, the Canadian trade delegation came well prepared and had a plan to deal with each economic sector under discussion during the FTA negotiations.[179] A few years earlier, Ottawa had attempted addressing selective economic sectors, similar to how the Auto Pact came from a single sector focus, but to no avail. Those previous discussions failed to even agree on the scope for future trade negotiations, not surprising given each side's attempts to include only the areas perceived as being to its own advantage. From this experience came Ottawa's strategy that when entering into free trade talks with Washington to either "go big - and multi-sectoral - or not at all."[180] There were fifteen advisory groups, known as Sectoral Advisory Groups on International Trade (SAGIT). The energy SAGIT was comprised of individuals who had worked on the MacDonald Commission report, and representation from both the Canadian Petroleum Association and the Independent Petroleum Association of Canada, two major industry groups. The Canadian energy SAGIT kept a low profile, knowing negotiations with the U.S. involving Canadian oil were a very sensitive political issue in Canada. The U.S. energy negotiating team also wanted to keep a low profile as well since many U.S. domestic oil

[179] Ibid., 112-114.
[180] T.A. MacDonald, "Canada, the FTA and NAFTA: A view from the negotiating table," The London Journal of Canadian Studies (Vol. 14, 1998/9), 59.

producers did not want to see increased Canadian oil imports and the industry backlash that had occurred in the 1950s.[181] However, helping keep public angst at a minimum during the long negotiations were dramatically falling world oil prices. The oil industry is always less of a political target during times of falling oil prices and profits.

The FTA's energy provisions were agreed to early in the negotiating process without much discussion or controversy. When made public, to help deflect criticism, Ottawa ensured the agreed upon provisions stressed existing multi-lateral agreements Canada had signed earlier, such as the IEA or the GATT Agreements. Unlike other economic sectors or specific industries, negotiations over energy between Canada and the U.S. were not about tariff reduction, but about satisfying U.S. energy security concerns and enhancing Canadian trade opportunities with the largest economy on earth. It is also important to remember that Canada had asked for the free trade negotiations and was thus the "demandeur."[182] It was probably also true that Canada needed a free trade agreement more than the United States. It was from Washington's perspective a simple calculation. Canada wanted a wide-ranging multi-sector free trade deal, and the U.S. wanted Canada's oil.[183]

Looking back, Gordon Ritchie believes there was a sense of inevitability during the Canada-United States FTA energy negotiations. Reisman's Deputy believes the Mulroney Conservatives had already clearly signalled to the Canadian public its intentions to deregulate the Canadian energy sector during the 1984 election. Unlike Trudeau, the Mulroney government wanted to harness Canada's staples economy through private sector means and benefit from its enormous ability to create jobs and create regional and national wealth. Therefore, Mulroney was

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[181] Doern and Tomlin, Faith & Fear, 121.
[182] Ibid., 278.
[183] Ibid., 284.

going to give the U.S. negotiators something it was going to receive anyway. During a recent interview, Ritchie stated talks over energy were not a matter of negotiations as much as a reaffirmation by Canadian negotiators of where Canada wanted to go with deregulation of the Canadian oil markets. Ottawa simply hoped that Washington would take note and reciprocate.[184] Part of Mulroney's political calculation was also his intention to pay back Western Canadian voters for their support votes in the last federal election by continuing to deregulate the Canadian oil industry and negotiate a free trade agreement with the United States.[185] It was no secret Western Canada, especially Alberta and Saskatchewan, were overwhelmingly in favour of closer energy ties with the United States, and free trade in general.[186] Pressure for a free trade agreement also came from Canada's oil industry. Canada's conventional oil production was falling and Alberta's oil sands needed the security of demand that would come from free trade with the U.S. to add oil production and attract foreign capital.[187] On the other hand, both Ontario and Quebec were far more resistant to a FTA in general since many felt their manufacturing sector could not compete with lower cost U.S. manufacturers.

How important were obtaining greater guarantees of Canadian oil for the U.S. during the FTA negotiations? From Washington's perspective, securing Canadian oil with a proportionality clause, as an insurance policy in the event of a supply disruption, was a key goal. Ritchie conceded, when asked if the energy provisions were a potential deal breaker, and responded by

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[184] Gordon Ritchie in conversation with the author February 4, 2013. Eric M. Uslaner, "Energy Policy and Free Trade in Canada," Energy Policy (August 1989), 326. Note: Both Senators Bentsen and Chafee were on record encouraging U.S. access to Canadian energy.
[185] Doern & Tomlin, Faith & Fear, 133-137.
[186] John N. McDougall, Drifting Together: The Political Economy of Canada-U.S. Integration (Peterborough: Broadview Press, 2006). Note: From Ottawa's perspective, while energy was important, it was secondary to the importance of opening up the U.S. market for central-Canada's manufacturers who could take advantage of open access to the U.S. market, taking advantage of Canada's lower currency.
[187] Paul Chastko, "Anonymity and Ambivalence," 174.

stating, "That's probably true."[188] When asked if the energy provisions were a potential deal breaker, Burney wrote back, "Basically yes. The U.S. and Canada both wanted unfettered flows of energy as a basic principle in the FTA. [I]cannot remember who first raised it but believe it was the U.S. It was, in any event, more important per se to the U.S., but was essential for us to get unfettered access."[189]

U.S. Energy Security

Washington's goal of a secure supply of Canadian oil was an important part of its energy security. For Ottawa the FTA was a trade agreement, for Washington it was less about trade and more about its energy security. Since the Second World War, and especially the oil shocks of the 1970s, the United States has been preoccupied with their energy security. Since Canada is a net oil exporter, with growing oil production from Alberta's oil sands, its needs are vastly different from that of an oil importer, such as the United States. The world currently consumes over 90 million barrels of oil daily, of which the U.S. consumes 25 percent. Presently, 40 percent of U.S. oil needs are covered by imports and almost 70 percent of their total oil requirements are used in the transportation sector. In other words, 16 percent of total daily global oil usage is for Americans to transport themselves or their goods.[190] To paraphrase President George W. Bush, Americans are indeed addicted to their cars.

From Washington's perspective, the need to import vast quantities of crude oil for its economy is a strategic liability and a potentially existential issue. Leon Fuerth writes that, "Access to energy at stable prices is a fundamental requirement for the stability and success of the economy of the United States. Any external threat to supplies of energy involves the vital

[188] Gordon Ritchie in conversation with the author, Feb. 4th, 2013.
[189] Derek Burney in an email with the author, July 25, 2012.
[190] EIA, "United States Petroleum Needs," www.eia.org.

interests of the United States."[191] There has long been a political consensus in Washington that access to oil is a national priority for the United States. When David Stockman, President Reagan's OMB Director, declared, "All the U.S. needs, in the way of an energy policy, is strategic reserves and strategic forces," he was summing up U.S. philosophy on achieving energy security.[192] As discussed earlier, the U.S. would never have risen to superpower status following the Second World War if it did not have ready access to cheap and abundant petroleum. "Of all the nations of the world," comments Robert Slater, "it was the United States that used oil to its greatest advantage. Americans were neither the only ones to consume it nor the only ones to become so dependent on it, but they were the first and only nation to build an entire economy around oil."[193]

During the 1950s and 1960s Canada was viewed as a secure supplier of oil to the United States. That changed during the tumultuous 1970s and the Trudeau years. Washington felt there could be no ambiguity in Canada's commitment to come to its aid during another major oil supply disruption and the FTA represented the opportunity to secure that commitment. A consistent goal of Washington's energy security strategy is having physical oil in place, available for both commercial and military use. Saudi Arabia has a key role in Washington's energy security strategy, as does the United States Navy to ensure oil trade routes remain open. Saudi Arabia has the largest share of global spare oil capacity; currently at 4 million b/d.[194] A nation with spare oil capacity has the ability to affect oil prices. Without this spare capacity itself, the United States has not shied away from preserving Saudi spare oil capacity. The U.S. domestic component of this overall energy security strategy includes domestic production, the Strategic

[191] Leon Fuerth, "Energy, Homeland, and National Security," in Energy & Security: Towards a New Foreign Policy Strategy ed. Jan H. Kalicki & David L. Goldwyn (Baltimore: The Johns Hopkins University Press, 2005), 411.
[192] Bruce Beaubeauf, the U.S. Strategic Petroleum Reserve, 117.
[193] Robert Slater, Seizing Power: The Grab for Global Oil Wealth (Hoboken, N.J.: John Wiley & Sons, 2010), 67.
[194] EIA, "Saudi Arabia" www.eia.org.

Petroleum Strategy (SPR), the 928 million barrel storage facility on the U.S. Gulf Coast, and Canada's oil production. From Washington's point of view having Canada as their biggest supplier of oil was integral to their energy security and gave U.S. policy makers comfort.[195]

The 1973 Arab oil embargo continues to be a touchstone for the United States, its citizens and its politicians when discussing U.S. energy security. The automobile still defines the United States for much of the world - mobility, freedom of movement, and the open road. This is why images of massive car line-ups for gasoline during the 1973 Arab oil embargo still carry such potent political weight. "The gas lines," Lisa Margonelli writes, "incubated a national loss of identity with geopolitical implications," adding, "the whole definition of being American was we drove our cars anywhere we wanted to. Public transit and waiting in line was something communists did."[196] Though a psychological success, as a policy tool to achieve a political goal, the 1973 oil embargo was a practical failure. The embargo proved that there is always oil on the international spot market for those willing to pay the price. M.A. Adelman points out that that even Saudi Oil Minister, Sheik Yamani dismissed the embargo, after the fact, as an economic weapon.[197] What gasoline shortages existed was greatly exaggerated, and exacerbated by U.S. government policies. Government took a manageable problem and made it much worse. Looking back, Adelman concluded, "The miserable miles long lines resulted from domestic price controls and allocations, not from any embargo."[198]

There were two main lessons from the 1973 embargo: First, there has to be adequate emergency oil reserves on hand, hence the establishment of the U.S. Strategic Petroleum Reserve

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[195] Robert Bamberger, "The Strategic Petroleum Reserve: History, Perspectives and Issues," Congressional Research Service, 7-5700, (August 18, 2009), 2.
[196] Lisa Margonelli, Oil on the Brain: Adventures from the Pump to the Pipeline (New York: Doubleday, 2007), 104.
[197] M.A. Adelman, "The Real Oil Problem," Regulation (Spring, 2004), 19.
[198] Ibid.

and the creation of the International Energy Agency. Second, an open and free market is the most efficient manner to allocate oil stocks, especially in times of a disruption. This faith in the free markets would find yet another outlet in the FTA. It was with this sense of energy insecurity that Washington sat down with Ottawa and commenced free trade negotiations.

CHAPTER THREE: The FTA's Energy Chapter

The trajectory towards a consolidated North American oil marketplace took decades and has proceeded in fits and starts, but ultimately Canada became even more integrated into the U.S. oil marketplace following the implementation of the FTA in 1989. For its time the Canada-United States Free Trade Agreement was as comprehensive as it was ground breaking.[199] The Agreement contains 21 Chapters, 153 articles, three agreed letters and numerous annexes. The FTA's energy chapter covers all energy goods, such as oil, natural gas, electricity, coal, and basic petrochemicals. It was also extremely innovative, according to an international respected trade expert, because the trade agreement was unprecedented in its detail and its bilateral commitment.[200] While not creating a customs treaty or a common market, Ottawa and Washington had nonetheless sent a signal to their respective oil industries.

The FTA's Energy Provisions

The main thrusts of the FTA's energy provisions are threefold: to simultaneously reaffirm the importance of the marketplace, especially for price discovery,[201] the importance of Canada's multi-lateral commitments to the liberalization of trade, and cementing further bi-lateral energy trade ties with the United States, especially during times of a supply disruption.

At the outset Washington insisted that the energy provisions in the FTA be a separate and expansive chapter to better allow members of Congress to "sell the agreement" to their

[199] The recent Canada-EU trade deal is different for many reasons from Canada's free-trade agreement with the United States and also covers a broader scope of trade issues. Canada does less trade overall and no oil exports to Europe. However, the Canada-EU free trade agreement, though preliminary, allows for sub-national procurement. For example, European companies can bid on infrastructure projects, and Canadian companies can do the same in Europe.
[200] Anonymous Interviewee #2.
[201] The bringing together buyers and sellers in an open and transparent marketplace to place bids to determine the value of something is referred to as price discovery.

constituents, showing that Canada had made key concessions to U.S. energy security needs.[202] Canada, on the other hand, wanted energy treated like any other manufactured good or service. Canadian negotiators sought an agreement in principle from their U.S. counterparts that a good is a good, even a strategic commodity such as oil. The initial Canadian negotiating position stemmed from the soon to be agreed upon Chapter 4 of the FTA dealing with all general "goods," their tariff removal (if applicable) and the elimination of import and export restrictions.[203] Ottawa thought it was redundant to have yet another chapter dealing with general goods, but underestimated Washington's resolve on insisting that energy have its own separate chapter. Symbolically, a separate energy chapter was very important for Washington, so towards the very end of negotiations the Canadian negotiators acquiesced to U.S. demands, leaving many on the Canadian negotiating team very surprised when energy had its own chapter in the final text.[204]

Given the asymmetrical trade relationship between Canada and the United States it is perhaps naive the U.S. would permit unfettered access to their economy without something substantial in return. Battrum and Lock argue against those who believed Ottawa should have played hardball to get further concessions from Washington believing Canada was fortunate to be even at the same negotiating table.[205] Perhaps a little too dismissive of Ottawa, but at the same time it accurately describes Washington's attitude about sitting at a negotiating table with a Canadian negotiating team.

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[202] Doern & Tomlin, Faith & Fear, 89.
[203] The Canada-U.S. Free Trade Agreement Synopsis, The International Trade Communications Group Department of External Affairs (1988), 30.
[204] Doern & Tomlin, Faith & Fear, 124.
[205] Shelly P. Battrum & Reiner H. Lock, "The Canada/United States Free Trade Agreement and Trade in Energy," Energy Law Journal (Volume 9, No. 2, 1988), 332.

Following the negotiations Washington was quite happy with the final trade agreement, feeling the FTA protected both its strategic interests and U.S. consumers.[206] Washington had gained many concessions from Canada regarding what was no longer permissible under the FTA, mostly at the expense of the producing provinces. Andre Plourde points out the aspects of the NEP that the producing provinces objected to most strenuously, such as price controls and the PIPs program, could still be implemented under the FTA. On the other hand, Washington's major objections, such as discrimination against foreign oil companies would no longer be permitted under the FTA.[207]

The General Agreement on Tariffs and Trade

Prior to and following World War One Canada still maintained very strong economic, cultural and political ties to Great Britain, Ottawa not being granted control over its own foreign affairs until 1931. However, during the Second World War Canada matured greatly as a nation. Not only did it contribute in a very substantial manner to the Allied war effort, it also built up a strong manufacturing sector and established very good relations with a number of countries. The United States emerged from the war as the West's economic and military superpower. However, to help defuse this preponderance of post-war U.S. economic and political influence Canada attempted to deal with the United States as much as possible in a multi-lateral forum.

On October 20 1947, The United States, Canada and 21 other nations created the General Agreement on Tariffs and Trade (GATT), a rules-based multilateral trade agreement encouraging liberalized global trade, with the Agreement coming into effect on January 1, 1948. Initially the

[206] Jeffrey J. Schott, "U.S.-Canada Free Trade," Institute for International Economics (April 1988), 23.
[207] Andre Plourde, "The NEP Meets the FTA" Canadian Public Policy (1991).

GATT was supposed to be only a temporary measure, "more an agreement, and a set of processes than an organization with any substantive enforcement powers."[208] A more formal organization called the International Trade Organization (ITO) was to be created to warehouse, not just the GATT's agreements on commercial policies, but also rules on national economic policies. However, despite much work at the time the ITO never came into being because the U.S. Congress, pre-occupied with the Cold War, failed to bring the organization's enabling legislation to a vote in 1950.[209] Years earlier, during the Depression, the U.S. Congress granted its traditional authority to make trade policy to the Executive, with a vote to continue this arrangement every two years. When by default the GATT became the world's major trade body, the U.S. made it clear the GATT's rules would be adhered to only if they did not interfere with U.S. laws.[210] This, at best ambivalent and at worst self-serving U.S. attitude, was the major reason for the lack of enforcement available within the GATT, one of its major failings. The agreement had no teeth to discipline contracting parties that violated the rules.[211] Susan Ariel Aaronson concluded, "The trade agreement used to reduce protectionism allowed protectionism and was built to accommodate protectionism. Thus, the temporary GATT was not built on a very stable foundation, because the trade agreement, in addition to existing failings, had to be renewed by the U.S. Congress every couple of years."[212]

The World Trade Organization (WTO) finally came into existence in January 1995, following the conclusion of the latest GATT talks. The WTO meant the end of the GATT as an

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[208] Jan Krouzil, Canada's Free Trade Policy Experience, 51.
[209] The U.S. Congress never officially approved U.S. membership in the GATT either.
[210] Susan Ariel Aaronson, "From GATT to WTO: The Evolution of an Obscure Agency to One Perceived as Obstructing Democracy," http://eh.net/encyclopedia/article/aaronson.gatt.
[211] GATT participants are referred to as contracting parties, not member states.
[212] Ibid.

interim agreement implemented by its members on a provisional basis.[213] Again, the WTO did not replace the GATT; the GATT became one of several international agreements administered under the auspices of the WTO. Other agreements under the WTO include The General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS). Today, 159 nations are members of the WTO, including all the world's major economic powers. Major oil exporters who are members of the WTO include Saudi Arabia, Russia, Nigeria, Canada and Mexico and Norway. For simplicity sake, the GATT is used to describe both the GATT and the subsequent WTO.

The FTA, including its energy provisions, used the GATT as its foundation. Article 902 of Chapter 9 of the FTA reads, in part, "The Parties affirm their respective rights and obligations under GATT with respect to prohibitions or restrictions on bilateral trade in energy goods."[214] The FTA's energy chapter acknowledged both Ottawa's and Washington's commitment to the GATT and provided the necessary framework within which to negotiate a free trade agreement. While not perfect, the GATT provided a sense of order and a rules-based agreement for the liberalization of global trade. GATT has also provided a roadmap for all future regional free trade agreements among member states, such as the FTA. In the original GATT document resides a provision (Article XXIV) that allows member parties to create regional or bilateral free-trade areas provided a GATT working group to determine its consistency with the General Agreement studies the final agreement.[215]

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[213] Michael Hart, Fifty Years of Canadian Tradecraft: Canada at the GATT 1947-1997 (Ottawa: Centre for Trade Policy and Law, 1998), 206.
[214] Article 902 (1): Import and Export Restrictions, Canada-US Free Trade Agreement ,Chapter Nine, Energy" Foreign Affairs and International Trade Canada www.international.gc.ca/tradeagreements.ca
[215] Michael Hart, Fifty Years of Canadian Tradecraft: Canada at the GATT 1947-1999 (Ottawa: Centre for Trade Policy and Law, 1998), 168-171.

It is perhaps a bit disingenuous that the FTA's energy chapter used the GATT as a foundation, but politically expedient nonetheless. After all, for decades both Canada, and especially the United States, often ignored many of its rulings for domestic economic and political reasons. Under the GATT Canada and the United States faced restrictions over their ability to impose tariffs except in very limited circumstances. History, of course, has shown that this was not always the case, an example being the long-running softwood lumber dispute between Canada and the United States.[216] While the anti-dumping and countervailing duties used by the U.S. in this dispute were explicitly allowed under the GATT, Washington was seen as abusing many of these fair-trade rules.

Another example of abusing or ignoring the GATT was Ottawa announcement of the NEP in 1980. The United States was a signatory to the GATT at the time Canada announced the NEP, but this did not stop Ottawa from taking dramatic unilateral and discriminatory trade action against the United States. When asked to explain how this happened Michael Hart stated that officials in the Departments of Energy, Mines, Resources, and Finance, under a shroud of total secrecy, 'concocted' the NEP together. Even other cabinet ministers were unaware of the planning of the NEP. Later, trade and foreign policy officials were furious they were not consulted. "In their view, there were aspects of the NEP which would potentially get the Canadian government into trouble under international agreements. There was some tense consultation among senior Canadian and U.S. officials and, as a result, there were some undertakings which got us off the hook." Hart concludes that, "If Washington had proceeded under GATT, Canada would probably have been found in contravention of its obligations.[217]

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[216] Gordon Ritchie, Wrestling with the Elephant, 195-215.
[217] Michael Hart in an e-mail to the author, October 25th, 2012.

These undertakings were a series of concessions to Washington, which substantially changed the NEP within a year of its implementation.[218]

However, despite these limitations in practice and due to Canada's tradition of multilateralism, Ottawa still found being a member of the GATT a net benefit. If there was a common thread between the Mulroney Conservatives and the Chrétien Liberals it was their insistence that the GATT framework be used in both the FTA and NAFTA, respectively, and their belief that the GATT agreement offered Ottawa multilateral protection in the event of a trade dispute arising with the United States.

While in theory the GATT does offer an element of energy security the U.S. obviously wanted more than an acceptance of the GATT, perhaps knowing first-hand how arbitrary its application could be and how unenforceable the organizations' penalties are. Ottawa, for its part, has had, according to Michael Hart, a "studied ambivalence about the GATT's usefulness in advancing Canadian trade interests."[219] Canada, as much as the United States, would use GATT as a form of treaty protection when need be, or ignoring it all together, as with the aforementioned National Energy Program. Ottawa had also learned to use the GATT, using its own interpretation, so it was not surprising "that Canadians proved among the most adept at gaining much and paying little."[220] This strategy would again prove itself useful during the FTA negotiations. Ottawa gave up little and gained much by the end of the FTA negotiations.

However, one could argue there were other more specific limitations in using the GATT's framework and supposed safeguards in practice. The focus of the GATT has always been market access of domestic manufactured products, not resource commodities such as oil.

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[218] Brian Bow, The Politics of Linkage, 102-127.
[219] Michael Hart, Fifty Years, 6.
[220] Ibid.

Hart states that the FTA treats oil as any tradable item, but the GATT, which is supposed to provide Canada with an extra degree of protection from unfair trading practices, has little specific to say on the matter. Apparently, the biggest reason for this omission is when the GATT came into being in the late 1940s there were so few of the large oil exporters admitted as members; there was simply no need to address these concerns.

Today, with the rapid globalization and a massive global trade in oil there needs to be a better understanding and inclusion of energy into multi-lateral trade agreements, such as the GATT. As a result, there continues to be a difference of opinion regarding how the GATT influences or has a bearing on the international trade of oil. Richards and Herman argue that the GATT was not pertinent to the international oil trade since commerce in hydrocarbons took place outside the multi-lateral system.[221] They both argue that the global oil trade occupies a void in international trade and is not specified in the original GATT framework, and thus developed its own set of rules.[222] However, Andrea Jimenez-Guerra explains that while it is common to assume oil was not specifically included in the original GATT document, "the oil trade is [still] governed by the general trade rules set by the WTO treaty and its annexes.[223] Jimenez-Guerra gives three reasons why oil is different from other goods covered by the GATT. First, the GATT was established primarily to reduce tariffs placed on goods by nations when trading with one another, thus liberalizing the global trade regime. However, tariffs did not create problems in the international trade of oil since oil was already largely tariff free, it was national energy policies

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[221] Timothy Richards & Lawrence Herman, "Relationship between Trade and Energy" WTO Publications http://wto.org/english/res_e/publications_e/wtr10_richards_herman_e.htm.
[222] Michael Hart et al, Decision at Midnight, 369. Shelly Battrum & Reiner Lock, "The Canada/United States Free-Trade Agreement," 327.
[223] Andrea Jimenez-Guerra, "The World Trade Organization and Oil," Oxford Institute for Energy Studies (October 2001), 1.

that influenced the dynamics of international trade in oil.[224] Second, between the time of the early GATT and the early 1960s, most of the oil producing countries in Asia and Africa still had colonial status. International oil companies had complete vertical control over all aspects of oil production in these nations. Third, Europe had no domestic oil production at all to protect, thus it was not a trade issue for the majority of GATT members.

Other nations have recognised the GATT's limitations regarding energy and especially fossil fuels. Rather than depending on the GATT to arrive at rules regarding the oil trade, a number of European and former Soviet Union republics created the Energy Charter Treaty (ECT) in 1991, with the Treaty coming into effect in 1998. With 52 members, the ECT is based on the principles of non-discrimination, sovereignty over natural resources, and development of open and efficient energy markets.[225] Neither Canada nor the U.S. is presently a member, though they have both held observer status since 1991. North America decided it was best to continue working in a bi-lateral fashion, using GATT's framework and not joining this multi-lateral forum.

Canada and the U.S. both used GATT membership as political cover to enter into a bi-lateral set of energy provisions. Both nations' own chequered application and use of the GATT gave little assurance it would be taken seriously as an enforcement tool by either Ottawa or Washington. That said, it did offer a readymade framework to proceed with negotiations and did provide a commitment device, in full view of both nation's friends and allies worldwide.

The Role of Government in the Oil Industry

Article 903: Export Taxes reads:

[224] Ibid., 30.
[225] "The Energy Charter: A Reader's Guide" From the ECT website.

> Neither Party shall maintain or introduce any tax, duty, or charge on the export of any energy good to the territory of the other Party, unless such tax, duty, or charge is also maintained or introduced on such energy good when destined for domestic consumption.[226]

Many concluded following the signing of the FTA that the days of government intervention in the oil industry were a thing of the past. At a Canadian Senate Hearing following the signing of the FTA, Alberta Premier Peter Lougheed echoed those feelings when he stated, "The biggest plus of this Agreement is it would preclude another National Energy Program."[227]

The intent of the FTA's energy provisions was to keep arbitrary government policy footprints on the oil industry to an absolute minimum. In this regard, both Washington and the Mulroney government wanted to see Canada's options limited, with Washington wanting no repeat of previous anti-American policies, but willing to give something in return. John MacDougal believes, "The U.S. saw a free trade agreement with Canada as a way of preventing a future revival of the NEP and it was prepared to engage in a broad trade off with Canada in energy matters in order to assure this"[228]

In the absence of direct government intervention, the marketplace was expected to determine oil prices, the ultimate destination for Canada's oil exports and the allocation of capital for infrastructure projects, such as pipelines. Government restrictions can neither disrupt normal channels of supply nor involve the imposition of higher prices on exports via licence

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[226] Article 903, www.international.gc.ca/tradeagreements.
[227] House of Commons Committee Reports, (1987), 29. Note: Statement by the Honourable Peter E, Lougheed to the Standing Committee on External Affairs and International Trade as reported in Canada.
[228] John N. McDougal, Drifting Together: The Political Economy of Canada-US integration. (Toronto: Broadview Press, 2006). 145

fees, taxation and minimum prices.[229] No Canadian Prime Minister, for example, could impose the two-tier oil pricing models of the Trudeau years, nor could a U.S. President re-create another MOIP, a tax on oil imports from Canada. Echoing the GATT, no Canadian government could discriminate against United States interests and U.S. consumers would be treated the same as Canadian consumers. This concept of equal treatment is a key to understanding U.S. goals throughout the negotiations. Not readily appreciated at the time was Washington's acquiescence to Canadian demands to place limits on U.S. intervention in their oil markets by not allowing arbitrary U.S. policy action. This limiting on U.S. policymaking was a major concession, running directly counter too much of U.S. strategic thinking since WWII.[230] Essentially, Washington agreed to Ottawa's demands to place limits on their long-held energy policy levers in exchange for access to Canadian oil.

Though some see any lessening of government policy levers as a serious shortcoming to the FTA, substantive powers by both Ottawa and Washington remain, including environmental, regulation, taxation, and royalties and the signing of international agreements, all of which can have a profound effect on the way the oil business operates in Canada. For example, the National Energy Board (NEB), though its mandate has changed over the years because of the FTA, still carries considerable industry and political weight regarding its reports and specific project recommendations, as do the provincial regulatory bodies.

Another example of how Ottawa's policymaking prerogative is unaffected by the FTA's energy provisions is the recent acquisition of Nexen Petroleum. Nexen had twenty-five percent of its oil assets in Canada, so Ottawa saw little need to block its takeover by the Chinese state

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[229] G.C. Watkins, "NAFTA and Energy: A Bridge Not Far Enough," in Assessing NAFTA: A Traditional Analysis eds. Steven Globerman and Michael Walker (Vancouver: The Fraser Institute, 2007), 3-7. http://oldfraser.lexi.net/publications/book/assess.

[230] Stephen Randall, United States Foreign Oil Policy, 308.

owned firm, Chinese National Off-Shore Oil Company (CNOOC). However, Ottawa signalled also that they were putting a firewall around all other Canadian oil sands assets, effectively taking them off the international market, and ensuring that they would remain Canadian. In addition, there is still much the federal or provincial governments can do policy wise or through "signals" to industry and the public concerning government oversight from the well head to the pump. For example, the lobbying efforts by federal and provincial leaders to push for a Presidential Permit for the Keystone XL pipeline or regular pronouncements regarding Canada's future need to export oil to Asia. The FTA "by no means erases the border between the United States and Canada which may afford some comfort to economic nationalists," wrote G.C. Watkins.[231]

There is little question that many of the 'traditional' methods of government intervention have been curtailed by the FTA. For example, if a future Canadian government wanted to create another national energy strategy that included export duties, taxes, levies and the like, and therefore treated U.S. consumers in a discriminatory manner, the energy provisions of the FTA would be in violation and the United States could seek redress. However, the Canadian government continues to possess policy levers that it can use to make energy policy without abrogating the FTA, for example, by controlling foreign ownership, using environmental protection, research and development and the introduction of alternative sources of energy.

The policy route chosen – and not one born of neglect – is for the markets, within a rules-based continental oil-trade market to make determinations regarding pricing, capital expenditure, and allocation of resources. The FTA's energy provisions do not place any limits on Canada's

[231]G. C. Watkins, "NAFTA and Energy," 3.

options regarding developing international oil export markets.[232] A Canadian oil company, for example, can freely obtain an export licence to transport or sell oil to any oversees market, provided there is infrastructure in place.[233] The FTA, though making it attractive, did not specify or oblige Canadian oil producers to remain continental players. After the signing of the FTA the Canadian oil industry, bound by history, geography, and economics at the time, chose to continue having a continental orientation because of undeniable comparative advantages, especially geographical. The result was a widening of Canada's footprint in the U.S. oil market by substantially increasing both its oil production and oil exports to the United States. However, the FTA's energy provisions do not block any moves by the Canadian oil industry to open new oil export markets. Canadian oil producers are free to sell as much oil as they wish to whomever they wish. Therefore, the share of oil exports that the United States receives from Canada can rise or fall according to the normal forces of supply and demand and the availability of oil export infrastructure. However, both Michael Hart[234]and Andre Plourde,[235] point out that what is important is the level and type of government involvement, as in assistance, in determining if any provisions within the FTA have been broken. For example, Enbridge is totally within the FTA to seek a reversal of Line 9 in Southern Ontario, bringing oil eastward, ultimately to Montreal. Not permitted under the energy provisions of the FTA is for Ottawa to order the reversal or, a little less clear, to use financial inducements to make it happen. Simply put, the Canadian oil industry is free to export to any market it chooses, infrastructure permitting.[236] However, it must also be mindful of Washington's reaction. Shifting some of Canada's

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[232] Richard Gilbert, "Let's reroute our energy strategy" Globe & Mail (October 17, 2005) A-15.
[233] Unless, of course, there is a legal prohibition such an embargo in place.
[234] Michael Hart in conversation with the author, July 4th, 2012.
[235] Andre Plourde in conversation with the author, August 1, 2012.

[236] National Bank Morning and FX Commentary (February 7, 2013) Note: According to the well-respected oil market-consulting firm PIRA, there are currently seventeen different initiatives under various stages of development to improve oil trade infrastructure in North America.

petroleum exports to Asia will not be without substantial challenges. Such a shift in policy after so many decades of integration with the United States will leave many past arrangements in doubt, perhaps seriously affecting economic and political relations between Ottawa and Washington. However, there is little doubt Canada must proceed in that direction, led by industry.

The Proportionality Clause

Article 904: Other Export Measures reads:

> The restriction does not reduce the proportion of the total shipments of a particular energy good made available to the other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the prevailing in the most recent 36-month period in which data are available prior to the imposition of the measure, or in any other representative period on which the Parties agree.[237]

No single clause in the FTA's energy chapter caused more controversy and confusion than its proportionality clause. As a concept within the realm of international trade, "proportionality could be characterized as a general principle of law and a principle of customary international law."[238] Its main use is enforcement of provisions within existing trade agreements. The notion of proportionality as a compliance remedy has seldom been applied to the energy sector given the highly political nature of the sector, both domestically and internationally. This explains why only three trade agreements in the world, including the FTA, have an energy chapter and the other two do not include a proportionality clause. [239]

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[237] "Article 904, Canada-US Free Trade Agreement," www.international.gc.ca/tradeagreements.
[238] Andrew D. Mitchell, "Proportionality and Remedies in WTO disputes," The European Journal of International Relations (Vol. 17 No. 5, 2006), 985-1008.
[239] Anonymous interviewee #4.

At the time of the FTA negotiations, it was no secret Ottawa wanted unfettered access to the much larger U.S. marketplace. In return, Washington wanted Ottawa to commit itself to a separate and specific energy chapter within a free-trade agreement so that it would be far more difficult to return to the statist oil trade policies of the 1970s and early 1980s. Ottawa, as well, wanted assurances that the U.S. marketplace would be open for Canadian business. This also meant Washington would not be able to use punitive import quotas as it had in the past.

The Canadian negotiators saw little downside in granting Washington an insurance policy if their oil imports were to be reduced by a Canadian government in the event of a supply emergency. It has been claimed that the proportionality clause was a carrot offered by Canada or insisted on by Washington to further satisfy U.S. energy security demands. Either way, Canadian negotiators saw little chance of the proportionality clause being used because of existing bilateral and multilateral commitments. Perhaps a little more naively, Simon Reisman also thought it made sense to grant the U.S. a proportionality provision simply because Canada was a good neighbour. Immediately following the conclusion of negotiations, he spoke to The Empire Club in Toronto. In the speech, Reisman spoke about how the FTA would make Canada a "richer" nation, able to maintain a strong safety net of social programs. With energy he said, "It stands to reason if we want free and secure access for our energy products that we agree not to abuse our best customer in a real shortage situation. This has been criticised."[240]

Article 904 of the FTA stipulates that Ottawa or Washington can only intervene in the normal operations of the oil marketplace citing four specific criteria: The exceptions that permit government intervention include conservation of exhaustive resources, supply shortage, price

[240] Simon Reisman, "Canada's Future under Free Trade," Speech given to Toronto's Empire Club, (Oct 16, 1987) www. speeches@empireclub.org.

stabilization, or national security. Any other policy reasons given to alter the continental oil market are possible grounds to abrogate the entire FTA. Truth is these exceptions are very broad and give the Canadian government plenty of latitude in determining a reason for government intervention without contravening the FTA. Still, the message is clear to industry and government, the importance of Article 904 is that it makes a return to prior policies a violation of the FTA unless it adheres to the narrow definitions.[241] There was no specific mention of oil itself – it being one of many energy goods cited – but the fact that Canada was a large exporter of oil to the United States guaranteed that any oil supply stipulations would be felt by Canada, and Canada alone. However, this situation could change in the future if the United States became a net exporter of oil to Canada or any other energy good. If oil supplies are reduced due to government intervention, for the first three criteria, conservation, supply shortage or price stabilization, a formula is then applied stipulating that the proportion of total supply of Canadian oil available for export may not fall below the previous three-year (36 month) average. Even if the total volume of oil available to Canadian consumers were to fall U.S. oil imports from Canada could not fall below a certain minimum level. This obligation to "share the pain" in the face of an oil supply disruption is also enshrined in international agreements that both Canada and the United States have signed. Reisman, for his part, said, "Let me remind you that we already have similar commitments under the International Energy Agency. That is what good trading partners do for one another."[242]

The inclusion of this specific provision was a direct U.S. response to Prime Minister Trudeau's unilateral announcements in 1973 and 1980 to suspend eventually all Canadian oil

[241] Shelly P. Batrum & Reiner H. Lock, "The Canada-United States Free Trade Agreement," 359.
[242] Simon Reisman, "Empire Club Speech."

exports to the United States.[243] As mentioned, often lost in the debate over this clause, indeed all the FTA's energy provisions, is there is nothing preventing free and open markets from determining oil export markets, volumes or prices. Moreover, the proportionality portion is not a supply obligation. Michael Hart explains the clause this way: "The rules govern what governments must/or must not do. There is an obligation to provide to the U.S. market on a proportional basis in the event there is any rationing in Canada; there is no obligation on private U.S. buyers to buy. The reciprocal obligation is to keep the markets open."[244] For example, Canadians could outbid U.S. consumers even for the proportional share of oil supply. Critics claim that no other country forbids its citizens first access to the majority of their own energy, but this is not true.[245] Nothing forbids Canadian consumers from bidding higher for Canadian oil and securing it on commercial terms. The obligation agreed to is for a minimum proportion of oil for export purposes – based on the previous 36 months average – is available to the highest bidder on commercial terms. However, how such a distribution program could actually work is unknown since the proportionality clause has never been used.

The fourth criterion, national security, also has its origins in the GATT and has its own special provisions within the energy chapter. Importantly, if either Ottawa or Washington cites specific national security reasons, the proportionality clause cannot be exercised even in the event of an oil supply disruption. This exemption to the proportionality clause warrants special attention since the existing GATT exceptions for national security had long been viewed as a major escape mechanism or loophole by member nations. The national security exemption in the FTA is limited to fulfilling only military related requests and is far more restrictive and narrower

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[243] Doern & Tomlin, Faith and Fear, 342.
[244] Michael Hart in an e-mail with the author, July 22, 2012.
[245] Gordon Laxer, "Obstacles to Powering Down to a Post-carbon Canada," Paper presented at the Canadian Political Science Association Meetings at Sir Wilfred Laurier University, Waterloo, Ontario. (May 18, 2011).

than under the GATT.[246] National Security exceptions include supplying a military establishment of a Party, responding to an armed conflict and responding to threats of disruption in the supply of nuclear weapons.[247] This narrowing of the national security clause within the FTA helped to close a long-standing policy loophole, specifically between Canada and the United States, for it considerably narrows the national security exemption of Article XXI of the GATT.[248] This has to be viewed as a major victory by Ottawa since it targeted past punitive oil trade policies of Washington's that were sometimes cloaked in the guise of national security issues, such as the VOIP and MOIP in the 1950s and 1960s and oil import fees from 1973 to 1979.[249] As for the existing GATT provisions G.C. Watkins concludes, "The relevant GATT provisions are vaguer, referring to general exceptions allowing the imposition of import and export controls in certain situations. Until such time as the conditions that might invoke the proportionality clause become apparent, its significance will remain hazy."[250] In other words, until the proportionality clause is actually used its ties to existing GATT safeguards are unclear.

Due to much misunderstanding, and perhaps the symbolism of yielding to the U.S. on such a key demand, the proportionality clause has endured the most criticism of any of the FTA's energy provisions. Truth is, there is doubt it could even work. At the very least, Andre Plourde believes the proportionality clause would be difficult to enforce.[251] However, as mentioned, the entire issue of the proportionality clause is largely moot since non-compliance is a distinct possibility. Today, Gordon Ritchie admits the Canadian negotiators used the proportionality clause as an inducement, knowing from their perspective it would be a major achievement for the

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[246] Shelly P. Battrum & Reiner H. Lock, "The Canada/United States Free Trade Agreement," 357.
[247] Article 907, Chapter 9 of the FTA.
[248] Battrum & Lock, "The Canada/United States Free Trade Agreement," 357.
[249] Ibid., 359
[250] G.C. Watkins, "NAFTA and Energy: A Bridge Not Far Enough," 3-7.
[251] Andre Plourde, "The NEP Meets the FTA,"

U.S. negotiators, but "did not expect anything to come of it."[252] Thus, it appears possible it was window dressing to make the entire free-trade agreement more palatable for Washington. Moreover, as a practical matter there is an excellent chance that before the proportionality clause would be used there would first be a Canadian declaration of force majeure. The question has to be asked, if global oil supplies were so constrained that Ottawa took over the Canadian oil industry, either through a short-term policy initiative or through outright nationalisation, would it still honour the proportionality clause it has with the United States and make available to the United States, even through market mechanisms, the required amount of oil? Amid that sort of oil supply emergency and the ensuing political clamour that would follow it seems unlikely that the same Canadian government that declared the emergency would continue to honour its energy agreement in the FTA and keep the spigots open for oil possibly destined to the United States while Canadians sat idly by. When asked about such a scenario and asked further, what if the shoe were on the other foot, Gordon Ritchie laughed and stated that of course the U.S. would renege on its commitment, as he fully expected Canada would too.[253] Nevertheless, at the time Washington viewed the energy provisions inside FTA as an insurance policy because no Canadian government would be able to discriminate against U.S. customers without abrogating the treaty.

The proportionality clause was a bargaining chip used by Ottawa to gain access to the U.S. market. However, the proportionality clause cannot be used, even in an emergency, if regular commercial transactions in the oil marketplace continue without interference from government. Therefore, if Canadian oil exporters eventually weaned themselves off the U.S. oil market through open and free market activities the proportionality amount could theoretically be

[252] Gordon Ritchie in conversation with the author, February 4, 2013.
[253] Ibid.

brought to zero with no recourse for the United States. Likewise, if Canadian oil exports to the U.S. become less needed in the future, due to increased U.S. domestic oil production, Canada would have no recourse.

International Energy Agency

Article 908 of the FTA reads:

> The Parties intend no inconsistency between the provisions of this Chapter and the Agreement on the International Energy Program (IEP). In the event of any unavoidable inconsistency between the IEP and this Chapter, the provisions of the IEP shall prevail to the extent of that inconsistency.[254]

Advocates of the FTA argue that even if Canada's GATT obligations were not substantive enough, Canada remained obliged to share its energy in times of emergency and shortage through its membership in the International Energy Agency (IEA). Regarding this point, Hart agreed and noted, "Governments that are members of the IEA are committed to sharing their petroleum resources in time of world shortage."[255]

In the wake of the 1973 Arab oil embargo, the Organization for Economic Cooperation and Development (OECD) nations began a massive oil-stockpiling program in an attempt to mitigate the potential of another supply and price shock, preparing for the unknown. Even before the Arab embargo, Europe was well ahead of the United States in stockpiling oil and finished products.[256] West Germany, Japan, and Italy had already mandated both government-owned stockpiles and/or mandatory inventory requirements on their domestic petroleum industries. The

[254] Article 908, Canada-US Free Trade Agreement www.international.gc.ca/tradeagreements.ca
[255] Michael Hart et al., Decision at Midnight: Inside the Canada-US Free Trade Negotiations, 369.
[256] Bruce Beaubeauf, The U.S. Strategic Petroleum Reserve, 26-28.

IEA came into existence on September 27, 1974 in Brussels. Charter members were the United States, Canada, West Germany, Italy, the Netherlands, Belgium, Luxembourg, Denmark, Ireland, the UK, Austria, Spain, Sweden, Switzerland, Turkey, and Japan. A key feature of the IEA is its International Emergency Program (IEP), an oil-sharing program among its members. Interestingly, of all the OECD members that stockpiled oil only the United States would operate a program owned and operated by a government with no compulsory industry inventory reserves, which underscores how politically and strategically involved Washington wanted to be regarding the holding of physical oil assets.

The IEA distinguishes between members with oil supply obligations and those with oil supply rights. Currently Canada, as a net exporter, has supply obligations and the United States, as a net importer, has supply rights.[257] Other nations granted exemptions were Great Britain and Norway. However, "it did imply that in a very severe energy crisis, the United States would have to share its domestic oil supplies, possibly including its strategic oil reserves, with other member nations."[258] The IEP crisis program was designed to be implemented when there was a seven per cent drop in oil supply to member nations. However, following the 1979 Iran Revolution and subsequent oil shock, the IEP triggering mechanism was changed so that member nations could customise their own domestic response and determine if they have a meaningful physical shortage and if a drawdown of oil stocks was warranted. This lack of clarity regarding what constitutes a "meaningful physical shortage" could be a major drawback to depending on the IEP in times of an oil supply disruption. The other problem was the IEP was not a general sharing agreement, but rather an agreement to make oil available for commercial purposes. This would

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[257] Paul G. Bradley & G. Campbell Watkins, "Canada and the US: A Seamless Energy Border?" The Border Papers, The CD Howe Institute, (No. 178, April 2003), 16.
[258] Bruce Beaubeauf, The Strategic Petroleum Reserve, 26-28.

affect the price of oil but perhaps not the final destination of the crude oil being exported, as was found out during the 1973 oil embargo,

While Ottawa felt the IEA was a major policy tool in the event of a major oil supply disruption, Washington doubted its usefulness at the outset given its multilateral approach to energy security and its European influence. Vito Stagliano's book has a chapter on the IEA entitled "Bureaucratic Inertia at the IEA" that conveys Washington's frustration with this large, unwieldy, mostly European body. Stagliano, who for many years was a senior official at the U.S. Department of Energy, largely dismisses the importance of the IEA. The Europeans, according to Stagliano, had a "bureaucratic paternalism of the kind that European governments feel entitled to practice, but the Americans could never tolerate."[259] Moreover, the IEP Agreement did imply that in a very severe energy crisis, the United States would have to share its domestic oil supplies, possibly including its strategic oil reserves, with other member nations."[260] In short, the U.S. had little faith in the IEA to secure its physical oil needs during a supply disruption. The specificity of the energy chapter in the FTA gave Washington an extra level of assurance that in the event oil imports were curtailed to the United States, that Canadian oil would be forthcoming.

The FTA's energy provisions integrated existing GATT and IEA obligations. However, it is questionable how useful this will prove down the road, but it certainly provided political cover for both Ottawa and Washington at the time. Determining how ironclad the guarantees of any of these bilateral and multi-lateral agreements are will be moot during an energy crisis. Expect all

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[259] Vito Stagliano, A Policy of Discontent: The Making of a National Energy Strategy (Tulsa: Pennwell, 2001), 228.
[260] Ibid., 227.

of these agreements to have their energy provisions expanded, altered or amended in some fashion without breaking them during a serious oil supply crisis.

The FTA's Aftermath

Detractors of the FTA's energy provisions accused Ottawa of giving away too much with Canada becoming nothing more than an integral part of America's energy security framework and a net loss for Canadian sovereignty.[261] This argument ignores the comparative geographical advantage Canadian oil already had, regardless if the FTA had happened or not. There is an excellent chance the Canada-U.S. oil market would have developed along the same path, FTA or not. However, because the FTA brought together issues of oil, sovereignty and the United States the stakes were high and the rhetoric higher. Fuel was added when Clayton Yeutter, the U.S. Trade Representative during the FTA talks, reportedly stated, "We've signed a stunning new trade pact with Canada. The Canadians do not understand what they have signed. In 20 years they will be sucked into the U.S. economy."[262] Not surprisingly, Yeutter later denied making the statement, but it does speak to the tone of the debate, both then and now.

However, at the time the pressure was intense to kill the trade deal. For example, when looking back after leaving office Pierre Trudeau wrote in his memoirs: "I believe that when you are negotiating with the United States, an economic superpower, you have to be a much harder bargainer than we were."[263] How could Canada have bargained harder? Canada had one-tenth the economy and was the party that asked for the negotiations. The United States had little to lose in

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[261] Globe and Mail, "Washington to Canada: Fill'er up" (September 26th, 2000) A-12. Petroleum News "ANWR, U.S. Takeovers Revive Grumblings in Canada over its Open Energy Border" (March 28, 2001) 3.
[262] David Dyment, Doing the Continental: A New Canadian-American Relationship (Toronto: Dunburn Press, 2010), 134.
[263] Pierre Trudeau, Memoirs, 360.

entertaining Canada's interest in a free trade agreement, while Canada felt it had much too potentially lose in not achieving one. Still, Journalist Peter C. Newman wrote, "My peeve was what we gave away – lock stock and barrel – unhindered access to our energy resources without gaining any compensating advantages. One paragraph of the treaty even committed us to provide 'proportional access to the diminished supply' if we started to run out of oil for our own use. It was madness."[264]

The media was full of differing interpretations of what free trade in energy meant for Canada. Was Canada surrendering its sovereignty? An editorial appearing in The Vancouver Sun probably summed up the thoughts of many when it warned, "Of all the provisions in the free trade deal that Canada and the United States are proposing to enter, the energy section is the most unsettling." The editorial concluded with the following warning, "It wouldn't destroy our identity, or jeopardize our way of life. But it could mean some chilly winter nights if the world's oil stops flowing."[265] This last point referring to Canada's seemingly inability, once the agreement goes into effect, to implement a Canada-first policy, the protection of Canadian consumers in the event of an oil supply shock. The Kitchener-Waterloo Record published an editorial entitled "Ottawa abandons our energy security," with this opening sentence, "For a Canadian nationalist, it is time to weep." And adds, "Energy security is still a vital national interest, yet, Ottawa has effectively destroyed its ability to protect that interest on behalf of Canadians."[266]

In response to the public outcry Richard Lipsey, a Queen's University economist wrote, "No provisions of the Canada-U.S. Free Trade Agreement have been more criticized,

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[264] Peter C. Newman, The Secret Mulroney Tapes: Unguarded Confessions of a Prime Minister (Toronto: McClelland & Stewart), 188.
[265] The Vancouver Sun, "Pinning down free trade's energy deal," (December 15, 1987), B-6.
[266] Kitchener-Waterloo Record, "Ottawa abandons our energy security," (March 27th, 1992).

misinterpreted, and misrepresented than those dealing with energy."[267] Lipsey assured readers that the Canadian government still had "sufficient policy tools" to respond to a national emergency, those tools including controlling the extraction rate of non-renewable resources, taxing oil production, encouraging exploration of new energy resources and preventing or approving foreign takeovers of Canadian oil companies.[268] For Canada's negotiating team the question of giving away too much to the U.S. regarding energy was meet with skepticism. Gordon Ritchie called the entire controversy over the energy chapter a "non-issue."[269] Today, looking back Michael Hart still believes the energy provisions in the FTA were indeed "unexceptional."[270] Indeed, the FTA's energy provisions, and the business climate they provided, only made past Canadian government policies such as the National Energy Program even more discredited.

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[267] Richard G. Lipsey, "Free Trade Deal Will Not Drain Canada's Energy," Kingston Whig-Standard, (July 26, 1988).
[268] Ibid.
[269] Gordon Ritchie, Wrestling with the Elephant, 125-126.
[270] Michael Hart in conversation with the author July 4th, 2012.

CHAPTER FOUR: Changing Times

After the Liberal-controlled Senate refused to ratify the FTA, Brian Mulroney called and won the subsequent federal election in 1988 ensuring that free trade with the United States became a reality. Shortly thereafter, a more broad-based consensus emerged among the Canadian political elite that perhaps free trade with the U.S. was a positive development. For example, Jean Chrétien, who a decade earlier had helped implement the NEP, assumed the free-trade file following the Liberal victory in 1993. Despite former Liberal Leader John Turner's emotional denunciation of the FTA during the 1988 federal election, Chrétien was far more pragmatic. During the lead-up to the FTA Chrétien wrote in his memoirs that he believed the Liberals had made a mistake campaigning against free trade.[271] In fact, Liberals had a long tradition of being free traders dating back to Laurier, but Chrétien, like Mulroney, also believed that if Canada negotiated a free-trade agreement with the United States it had to use the GATT's existing framework. Under pressure from within his Party Chrétien did try to make some changes to the energy provisions, but to no avail. Laxer and Dillon point out that Chrétien did attempt to pressure the U.S. into weakening the energy provisions regarding U.S. energy security. President Bill Clinton's response was unambiguous, "We will not weaken or renegotiate any provisions of the FTA or NAFTA. Specifically, we will not allow the Canadians to opt out of the 'proportionality clause."[272] The Liberals did unilaterally release their own interpretation of energy security for Canadians, but there is little legal weight behind such measures. Interestingly, Chrétien's memoirs did not mention this episode at all and mentions free trade with the U.S. only in passing. Chrétien also continued the privatization of Petro-Canada, started by the

[271] Jean Chretien, My Years as Prime Minister (Toronto: Vintage Canada, 2007), 97.
[272] Gordon Laxer & John Dillon, "Over a Barrel," 13.

Conservatives in 1991. In 1995, Ottawa's stake in Petro-Canada was down to 20 percent, and by 2004 Ottawa was no longer a shareholder. Regardless of their other political differences, both the Liberals and the Conservatives agreed that the best national policy for oil trade was the status quo, a market-driven, though highly regulated, domestic oil industry, an approach that continues to this day under Prime Minister Stephen Harper.

Canada's Oil Industry Today

However, despite Canada's growing oil trade with the United States, the Obama Administration's decision on November 10th 2011, to delay the final decision on TransCanada Corporation's Keystone XL oil pipeline is a reminder of the limits to Canada-U.S. energy integration.[273] President Obama's delay was widely viewed as a nod to his own environmental constituency, rather than a complete repudiation of the pipeline itself. Nonetheless, the result was the same, confusion and uncertainty regarding whether the Keystone XL pipeline would be completed as planned.

Derek Burney was a participant during the negotiation of the FTA as Prime Minister Mulroney's Chief of Staff. During the subsequent NAFTA negotiations, Mr. Burney was Canada's Ambassador to the United States. Currently, Norton Rose, an Ottawa-based law firm engaged in business consulting employs Mr. Burney. The delay on the Keystone XL pipeline has left Derek Burney arguing Canada should unilaterally withdraw from the proportionality clause

[273] The Keystone XL pipeline is a massive, multi-stage project. TransCanada plans to increase the initial capacity to deliver Alberta crude oil to Texas to approximately 1.1 million b/d. The final phase would involve building a new 1,179-mile pipeline from Hardisty, Alberta to Nebraska to Texas. The Obama Administration refused to grant a Presidential Permit to build the northern portion of the Keystone XL pipeline citing environmental concerns, but did allow construction to proceed on its southern leg to refineries on the U.S. Gulf Coast. Note: According to Paul Well's sources "Harper wasn't disappointed, he was furious" when he heard of the delay. Paul Wells, The Longer I'm Prime Minister: Stephen Harper and Canada 2006- (Toronto: Random House Canada, 2013), 361.

embedded in the FTA.[274] How this could be done without unravelling the FTA is unclear. Burney argues the 'spirit' of the FTA was broken with this decision to delay the XL pipeline project. Free trade in energy, after all, was about unfettered access to the U.S. market in exchange for Canadian oil. While there may be some who believe Washington abrogated the FTA with the Keystone XL decision, and Canada should have sought redress, many others believe Canada would have lost such a challenge based on valid environmental concerns alone.[275] Moreover, as we have seen, the regulation of pipelines is up to either Party and not covered by the FTA.[276] Simply put, by not permitting the Keystone XL pipeline, President Obama was not discriminating against a foreign company in order to protect a U.S. industry or a U.S. company.[277] As for the spirit of an agreement, provisions are either included in an agreement or they are not. Nonetheless, the message received by both the Canadian government and the Canadian oil industry was, it was felt by Burney, contrary to promises implied in the FTA. Mindful of its asymmetrical relationship with the United States, Ottawa and the producing provinces, know there is little direct leverage available. However, both federal and provincial governments along with industry are now determined to explore other export options, such as Asia, specifically China. Prime Minister Stephen Harper has publicly offered his government's support in establishing oil exports to Asia, referring to it as being vital to the national interests of Canada.[278]

Should Canada use its energy card in hopes of gaining leverage with the United States? Many are sceptical such a strategy would work. Washington simply has too many levers to pull

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[274] Derek Burney in an e-mail correspondence with the author July 25, 2012. Note: For the sake of transparency Mr. Burney sits on the Board of TransCanada Corporation and holds both 4,606 common shares and 34,770 deferred share units Trans-Canada. website: http://www.transcanada.com/2991.html.
[275] Anonymous interviewee #1
[276] John McDougall, "The Canada-U.S. Free Trade Agreement," 1-13.
[277] Anonymous interviewee #2.
[278] Financial Post, "Science will rule fate of pipelines: Harper" August 6th, 2012, FP-E.

that would make any trade dispute between Ottawa and Washington an unequal affair. A leading Public Policy scholar believes Canada must diversify away from the U.S. oil market so that Canada gains some advantage in its talks with Washington, "diversifying markets not only allows us (Canada) to reap monetary benefits but also improves our negotiating position when needed."[279] However, the scholar concedes, Canada must be careful in how it frames its actions. An overreaction to events by retaliatory means would not be in our best interests.[280]

Today, there is a changing dynamic at work regarding trade between Canada and the United States. Canada is trading less with the U.S. and more with the rest of the world. The U.S. needs less imported oil and has of late seen a dramatic increase in its domestic oil production. These changes add to the elevation of environmental issues on the political agenda and are the most significant changes over the past twenty-five years. The initial momentum of the FTA was lost after 9/11 when U.S. homeland security concerns began to trump increasing intra-North American trade. The effects of 9/11 and the aftermath of the 2008 financial crisis are still evident. In the first nine years of NAFTA, North American total trade as a percentage of global trade grew from 30 percent to 36 percent. Today that number stands at 29 percent.[281] Canada's trade with the U.S. has now fallen back to the same levels as at the time of signing of the FTA.

Environmental Concerns

One of the biggest changes to occur in the North American oil industry has been public pressure for a dramatic increase in environmental regulatory oversight. It was not seen as being an important issue at the time of the FTA and even in the NAFTA environmental safeguards

[279] Anonymous interviewee #1.
[280] Ibid.
[281] Office of the United States Trade Representative, "Canada" www.ustr.gov/countries Note: Despite this leveling of trade between the two nations U.S. goods and services trade with Canada totalled over $680 billion in 2011. The U.S. had a trade deficit with Canada of $34 billion, largely due to Canadian oil exports to the U.S.

were seen as having no teeth. There are now growing signs of a public and political shift within the United States and Canada that places environmental issues front and center, especially the bitumen produced from Alberta's oil sands.

Concerns over environmental stewardship might ultimately unravel plans for the construction of the Keystone XL pipeline. Under Executive Order 11423, as amended, the U.S. secretary of state receives and approves the granting of a Presidential Permit for any new or modified cross-border infrastructure projects. However, it will ultimately be the president who makes the final decision allowing the Keystone XL pipeline to proceed. Today, environmental issues surrounding Alberta's oil sands have found a political voice and are finding their way into U.S. legislation. The oil sands represent more than just a gooey combination of sand and oil; they are a lightning rod for dissent and a call to action. Often described as 'dirty oil' the oil sands are consistently portrayed in negative terms, with pictures of open-pit mine operations, foul air, tailings ponds and dead birds. Alberta's oil sands have become a political issue for whoever occupies the White House and whichever Party controls Congress. Over the past few years, U.S. legislation has been directed towards the oil sands. For example, the Energy Independence and Security Act (SR 1462, 2007) banned federal agencies, other than NASA, from purchasing alternative or synthetic energy sources that have a higher greenhouse gas than those of conventional fuels. It was expanded to single out transportation fuels derived from the oil sands.[282] Since its passage many U.S. industry groups and Ottawa have lobbied to get section 526 repealed, the most recent attempt being the Oil Energy Security Act (2010). The political waters are so muddied and murky that a spokesperson for the oil and natural gas group American Petroleum Institute said Section 526 in fact violates the 2005 Energy Policy Act, which orders

[282] Paul Chastko, "The Dirty Oil Card and Canadian Foreign Policy," Canadian Defence and Foreign Affairs Institute, (October 2010), 4-5. www.cdfai.org.

Congress to develop the oil sands.[283] Meanwhile, the American Clean Energy and Security Act (HR 2454, 2009) was to impose new limits on carbon emissions that would have possibly influenced future Canadian policy. This Bill passed the House but was defeated in the U.S. Senate. Canada's response to these examples of U.S. Congressional discrimination has been muted to non-existent. Much of this is indicative of the asymmetry of the relationship. Ottawa has to be careful when it picks its battles with Washington. For example, what would Ottawa's response be if Washington denied Keystone XL, or imposed a carbon import tax on bitumen throughput? This would be a form of trade discrimination, but what could or would Canada do? Derek Burney reminds us, in discussing standing up to Washington, "When you are one ten-tenth the size, it can be short sighted as it is short-lived and ineffective."[284]

U.S. Domestic Oil Production

Canada's importance to U.S. energy security continued into this century, but is lately becoming less important with each passing year. In early 2001, as part of a draft White House continental energy plan, Canadian oil reserves were viewed as part of the U.S. domestic supply.[285] Robert Bamberger described in the 2009 Congressional Review why Canada's reserves should be viewed in continental terms and treated as an insurance policy.[286] Canada is viewed as a friend and ally, but perhaps more importantly, as a reliable and secure source of oil, an aspect of the Canada-U.S. relationship that Washington did not ignore during the negotiations culminating in the FTA.

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[283] "New Oil Sands Legislation Would Strip Clause from 2007 Energy Act," Reuters. Oct 6, 2010. www.reuters.com.assets/print?aid=US281685088520101006
[284] Derek Burney, Getting it Done: A Memoir (Montreal & Kingston: McGill-Queen's Press), 152.
[285] Peter R. Sinclair, Energy in Canada (Toronto: University Press, 2011), 32.
[286] Robert Bamberger, "The Strategic Petroleum Reserve," Congressional Research Service, United States Congress (August 18th, 2009), 6.

Today, the North American oil market is rapidly changing. Nothing has altered the fundamental oil story in North America more in the last few years than the massive upward revisions in U.S. domestic oil production and oil reserves. U.S. crude oil production is making a dramatic comeback, largely through enhanced drilling techniques. Horizontal drilling and the use of massive amounts of high-pressure water and chemicals to break impermeable rock, known has fracturing, has led to a substantial increase in both natural gas and tight oil. The U.S. National Intelligence Council (NIC) and Leonardo Maugeri have both recently issued reports describing how this increase in U.S. oil production is both sustainable and transformative. Today, vast amounts of light sweet crude is produced from tight-oil formations throughout the United States. Recently the NIC released its annual forecast, "Global Trends 2030: Alternative Worlds" and called the increases in U.S. domestic oil production "a tectonic shift" in U.S. energy strategy and concluded "energy independence is not unrealistic for the U.S. in as short a period as 10 to 20 years."[287] Most unsettling for the Canadian oil industry is the observation that "the U.S. would import less or no oil from its current suppliers – Canada, among them"[288] One example of the increase in U.S. domestic oil production is the Bakken oil field, primarily in North Dakota. This oil reservoir, discovered in 1953, is part of the Williston Basin, which covers about 300,000 square miles, extends mainly across North Dakota, South Dakota, Montana, and Saskatchewan. Tight oil production in North Dakota's Bakken has risen from 110,000 b/d in 2006 to 740,000 b/d presently.[289] More importantly, total oil production in the entire Bakken region now exceeds 1 million b/d.[290] The U.S. Energy Information Administration has steadily revised upwards both oil production and oil reserve estimates for the Bakken over the past five years. Current estimates

[287] National Intelligence Council, "Global Trends 2030: Alternative Worlds" (December 2012), 35.
[288] Ibid. 36
[289] "Global Insight, 2013 Outlook," RBC Wealth Management (February 2013), 30.
[290] British Petroleum "Outlook 2030," (January 2013). www.bp.com.

are 5.4 billion barrels, while the Eagleford zone in Texas has tight oil reserves estimated to be 5.1 billion barrels.[291] Troubling for the Canadian oil industry is Bakken's oil production is now competing with Canadian crude blends for pipelines flowing to PADD 2, the U.S. Midwest, a traditional market destination for Canadian oil exports to the United States. This dramatic increase in U.S. domestic oil production, if sustainable, and if repeated elsewhere in the United States, could greatly affect the U.S. demand for Canadian oil, especially production from the higher cost Alberta oil sands. The U.S. could become a net oil exporter but also oil prices could potentially plummet along with the economic prospects for Alberta's oil sands. A dire prediction to be sure and a wakeup call for the Canadian oil industry.

Leonardo Maugeri is currently an Associate at the Geopolitics of Energy Project and the Environment and Natural Resources Program at the Harvard Kennedy School's Belfer Center for Science and International Affairs. Maugeri concludes in a recent report that "The shale/tight oil boom in the United States is not a temporary bubble, but the most important revolution in the oil sector in decades."[292] As U.S. domestic oil production experiences a renaissance, U.S. domestic oil demand is steadily dropping from 12.5 million b/d in 2005 to 8.4 million b/d in 2011, the lowest oil usage level since 1995[293], just as Canadian oil sands production ramps up. Using a phrase that is often over used, the shale oil discoveries in the United States, and the technologies that permitted it, are indeed "game changers." Canada's industry must react to this changing reality. The U.S. may need less Canadian oil in the years ahead. This means opening up new markets for Canadian oil exports.

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[291] EIA "2013" www.eia.org.
[292] Leonardo Maugeri, "Oil the Next Revolution: The Unpredicted Upsurge of Oil Production Capacity and what it means for the World," Belfor Center for Science and International Affairs, Harvard Kennedy School (June 2012), 66.
[293] "U.S. Oil Imports and Exports," Congressional Research Service, April 4th, 2012.

Conclusions

This thesis looked at how the FTA's energy provisions have influenced Ottawa's policymaking in the oil sector while examining the evolution of the Canada-U.S. oil-trade. Twenty-five years after the signing of the FTA, it is hard to imagine Canada and the United States not having a free-trade agreement. All the fears of Canada surrendering its political and economic sovereignty proved groundless. The last twenty-five years of oil-trade between Canada and the U.S. have been tranquil, while Canada's oil production and exports to the United States increased dramatically. The FTA's energy provisions, and the blueprint it laid out for industry and governments, can take much of the credit. The FTA, and the prior regulatory changes, altered the relationship between the state and the oil industry in Canada, indeed North America. The FTA effectively sidelined government, while promoting a free, open, and transparent marketplace to establish pricing, the allocation of capital, and the final destination for Canadian oil exports. It is no accident that the oil price spikes in 2005, following Hurricane Katrina, and to almost $150 a barrel in August of 2008, respectively, brought little in the way of a policy response from either Ottawa or Washington. While not perfect, the lasting legacy of the FTA's energy provisions has been its role as a commitment device. Both Ottawa and Washington are much less likely to impose short-term political solutions to a mostly economic issue and are willing to accept the verdict of the marketplace.[294]

What has emerged is a growing, maturing, and confident Canadian oil industry ready, willing and able to confront the challenges that lay ahead. Rising U.S. oil production and

[294] The U.S. from time to time does release oil from their Strategic Petroleum Reserve for political and short-term reasons. The latest was in 2011 when 30 million barrels were release for commercial purchase. The amount was matched by the IEA for a total of 60 million barrels released from stockpiles around the world.

environmental concerns means Canada's oil sector has had to rise to the occasion with new projects, new approaches, and new attitudes, all of which it is doing.

The year 2013 is vastly different than 1989, the year the FTA went into effect. If anything, Canada is as strong and vibrant today as it was provincial and unsure of itself a generation ago. A future Canadian prime minister would have to think long and hard before introducing a state-mandated national energy plan. That approach has been largely discredited, given the success of the alternative, a balance between industry self-interest and state regulatory oversight. When asked what the rest of the world could learn from today's Canada-U.S. oil-trade relations, Andre Plourde stated that given the success of the open-market approach, and its absence of government involvement in the oil-trade between Canada and the United States over the last twenty-five years, there would be no call or even need for a separate energy chapter today.[295]

[295] Andre Plourde in conversation with the author, August 1, 2012.

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United States Trade Representative www.ustr.gov

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APPENDIX A

Chapter Nine of the Canada-US Free Trade Agreement[296]

Energy

Article 901: Scope

1. This Chapter applies to measures related to energy goods originating in the territory of either party.

2. For purposes of this Chapter, energy goods refer to those goods classified in the Harmonized System under:

a) Chapter 27 (except headings 2707 and 2712);

b) subheading 2612.10;

c) Subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings); and

d) Subheading 2845.10.

Article 902: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties affirm their respective rights and obligations under the General Agreement on Tariffs and Trade (GATT) with respect to prohibitions on bilateral trade in energy goods.

2. The Parties understand that the GATT rights and obligations affirmed in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum export-price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum import price requirements.

3. In circumstances where a Party imposes a restriction on importation from or exportation to a third country of an energy good, nothing in this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of the other Party of such energy good of the third country; or

b) requiring as a condition of export of such energy good to the territory of the other Party, that the good be consumed within the territory of the other Party.

[296] "Canada-US Free Trade Agreement, Chapter Nine, Energy," Foreign Affairs and International Trade Canada. www.international.gc.ca/tradeagreements

4. In the event that either Party imposes a restriction on imports of an energy good from third countries, the Parties, upon request of either Party, shall consult with the view to avoiding undue interference with the distortion of pricing, marketing and distribution arrangements in the other Party.

5. The Parties shall implement the provisions of Annex 902.5

Article 903: Export Taxes

Neither Party shall maintain or introduce any tax, duty, or charge on the export of any energy good to the territory of the other Party, unless such tax, duty or charge is also maintained or introduced on such energy good when destined for domestic consumption.

Article 904: Other Export Measures

Either Party may maintain or introduce a restriction otherwise justified under the provisions of Articles XI:2(a) and XX(g),(i) and (j) of the GATT with respect to the export of an energy good of the Party to the territory of the other Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of a particular energy good made available to the other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most 36-month period in which date are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree.

b) the Party does not impose a higher price for exports of an energy good to the other Party than the price charged for such energy good when consumed domestically, by means of any measure such as licences, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price which may result from a measure taken pursuant to subparagraph(a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to the other Party or normal proportions among specific energy goods supplied to the other Party such as, for example, between crude oil and refined products and among different categories of crude oil and refined products.

Article 905: Regulatory and Other Measures

1. If either Party considers that energy regulatory actions by the other Party would directly result in discrimination against its energy goods or its persons inconsistent with the principals of the Agreement, that Party might initiate direct consultations with the other Party. For purposes of this Article, an “energy regulatory action” shall include any action, in the case of Canada, but the National Energy Board, or its successor, and in the case of the United States of America, by either the Federal Energy Regulatory Commission or the Economic Regulatory Administration or its successors. Consultations with respect to the actions of these agencies shall include, in the case of Canada, the Department of Energy, Mines and Resources and, in the case of the United States of America, the Department of Energy. With respect to a regulatory action of another agency, at any level of government, the Parties shall determine which agencies shall participate in the consultations.

2. In addition, the Parties shall implement the provisions of Annex 905.2.

Article 906: Government Incentives for Energy Resource Development

Both Parties have agreed to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

Article 907: National Security Measures

Neither Party shall maintain or introduce a measure restricting imports of an energy good from, or exports of an energy good to, the other Party under Article XXI of the GATT or Article 2003 (National Security) of this Agreement, except to the extent necessary to:

a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party.

b) respond to a situation of armed conflict involving the Party taking the measure;

c) implement national policies or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or

d) respond to direct threats of disruption in the supply of nuclear materials for defence purposes.

Article 908: International Obligations

The Parties intent no inconsistency between the provisions of this Chapter and the Agreement on an International Energy Program (IEP) In the event of any unavoidable inconsistency between the IEP and this Chapter, the provisions of the IEP shall prevail to the extent of that inconsistency.