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Troubles along the U.S.-Canada Border

Greg Rushford*

With more than USD 1 billion in goods crossing the U.S.-Canadian border every day, no wonder no wonder that President Barack Obama and Canadian Prime Minister Stephen Harper boast their close ties. Yet behind the scenes, there are awkward tensions over mutual accusations of protectionism—and also disturbing border-security issues stemming from rampant smuggling of illicit tobacco, narcotics, guns, and human beings.

It was all smiles on February 4, 2011, when President Barack Obama and Canada's prime minister, Stephen Harper, met at the White House. We have a "shared vision" to ensure that important border security and trade issues receive their necessary attention at the highest levels in both Washington, D.C. and Ottawa, the two leaders announced in a joint statement. The United States and Canada are "woven together like perhaps no other two countries in the world," Obama enthused to reporters.

They are woven so tightly. More than USD 1 billion in goods crosses the 4,000-plus mile U.S.-Canada border every day—a stark contrast with the rampant narcotics and people smuggling along the southern U.S.-Mexican border, which has become an open sore. Canada is America's number one export market. The United States exported more than USD 204 billion in U.S. goods to Canada in 2009 (compared with USD 69 billion in American goods exported to China that year), according to the most recent figures released by the Office of the U.S. Trade Representative. And the U.S. is Canada's top export partner, with 2009 sales of Canadian manufactured goods to the United States reaching USD 225 billion. That amounted to nearly three-quarters of all Canadian goods' exports. As Harper stressed at the February White House press conference, "We are true friends."

But my, how even the closest of friends can sometimes treat each other. Behind the smiles, there are awkward tensions over trade and also very troublesome security issues along the northern border that Obama and Harper prefer to gloss over. This article focuses on three otherwise unrelated controversies that go beyond the normal tit-for-tat spats that inevitably crop up between even the closest friendly nations. First, even though the U.S. enjoys its own

preferential trade agreement with Canada (the North American Free Trade Agreement), the Obama White House has worked behind the scenes in the promising ongoing Trans-Pacific Partnership (TPP) negotiations to exclude the Canadians from preferential access to lucrative markets in Asia—a game that the resentful Canadians also know how to play. Second, since 9/11, there have been increasing complaints from American importers and Canadian exporters that overly stringent U.S. border controls threaten jobs on both sides of the border. While the complaints began when George W. Bush sat in the Oval Office, they are intensifying in this third year of the Obama presidency.

However, by far, the most serious concerns involve organized criminal activities along one particular 12-mile stretch of the U.S.-Canada border that runs through 28,000 acres of the sovereign Akwesasne Mohawk Indian Territory. On the New York side, the Mohawks are in the United States; the northern part of the reservation is in parts of Ontario and Quebec. To evade high Canadian taxes on cigarettes, contraband cancer sticks are smuggled into Canada through this 12-mile hole in the border. Some come up from U.S. tobacco states like the Carolinas, but mostly the illegal smokes seem to come from factories right on the reservation itself. Beyond cigarettes, much of the ecstasy that floods the streets of New York and other East Coast cities also flows through the same smuggling routes—so much that Canada has become the number one U.S. supplier of ecstasy, according to official reports. In return, American gangs such as Hell's Angels have become Canada's top supplier of cocaine, along with assault weapons.

Asian triads and Eastern European mafias also look to this border hole to smuggle in drugs, prostitutes, and other illegal aliens. Although this is bad enough, it gets

Note

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even worse. Terrorist organizations like Al-Qaeda and Hezbollah are also known to be familiar with the Akwesasne smuggling routes. The risk of terrorist activities is “high,” as a recent investigation by the Government Accountability Office noted.

To be sure, U.S. and Canadian law enforcement and intelligence officials are trying the best they can to manage the mess. But evidence of strong leadership at the highest political levels is scanty at best. Despite their glowing assurances to the contrary that were uttered at their February White House lovefest, it does not appear that either Obama or Harper is really focused on what it would take to plug the 12-mile border hole. Their biggest mutual failure is neither leader has thought to reach out to help empower the sovereign Indian communities themselves to come up with a realistic plan to shut down the illegal activities and replace them with viable economic alternatives.

1. HERE IS WHAT IS GOING ON AND NOT GOING ON

The existence of the smuggling routes through the Mohawk reservation will come as surprising news to American readers. But the subject has been widely publicized in Canada. In 2008, an award-winning movie, *Frozen River*, dramatized how groups of Chinese and Pakistani people were hidden inside the trucks of cars and driven across the ice-up St Lawrence River into New York. (In warmer weather, the smugglers use speedboats.) Imagine what the deranged Col. Moammar Gaddafi, or Al-Qaeda sympathizers in Yemen and Pakistan—especially considering prominent news accounts that Obama’s CIA has been dispatching secret operatives on missions inside these troubled countries—might be thinking these days.

One would think that first and foremost, any U.S. president or Canadian prime minister would understand the importance of working through the Mohawks themselves—who are closest to the scene—to find ways to plug the 12-mile border hole. But even though it is a sovereign Indian territory that is involved, the Indians themselves “are constantly disregarded” by the top leadership in Washington, D.C., and Ottawa, says Carrie Garrow. Garrow is a Stanford Law School graduate who grew up on the Akwesasne Territory and has had extensive legal experience with Mohawk affairs. She is now the executive director of the Center for Indigenous Law, Governance and Citizenship at the College of Law at Syracuse University. “My belief is they need to actually invite the nations to sit at the table,” Garrow told me. “Sovereignty is recognized by giving them a seat at the table.”

This is the point where the story acquires a familiar ring for anyone familiar with how the U.S. and Canadian Governments have historically failed to respect Indian sovereignty, trying instead to impose solutions

from outside the reservations. Now, given the high stakes, the dark thought inevitably arises—given the unfortunate history of unheeded warnings before Pearl Harbor and 9/11—as to what it would take before the highest levels of government in Ottawa and Washington would really focus on the threat of a terrorist attack, facilitated by that 12-mile hole in the border.

Before looking at the details of how the smuggling routes began and what is being done in Ottawa and Washington about them, let us briefly consider the other border tensions involving legitimate international trade routes. The thread that ties these otherwise unconnected issues together is the lack of proper focus and political will at the top.

First are the little publicized behind-the-scenes protectionist recriminations over the ongoing Trans-Pacific Partnership negotiations, which are better known by their acronym, TPP.

2. WHO IS CODDLING WHOM?

The (coddled) U.S. dairy lobby, which enjoys its cash supports from U.S. taxpayers, accuses Canada of coddling its milk, butter, and cheese producers. This is as if Madonna were to protest that Britney Spears is no virgin. But however curdled the merits are, the Obama White House has its eye on dairy votes in key electoral states like Wisconsin, come 2012 presidential elections. Toward that end, U.S. trade officials have worked quietly to keep Canada from participating in the TPP negotiations.

Even to critics of trade-distorting preferential trading deals, the TPP is regarded as perhaps the most appealing ongoing trade-liberalizing negotiations anywhere (with apologies to the World Trade Organization’s (WTO’s) long-troubled Doha Round, which may be headed toward its final wreck when WTO ministers next meet in Geneva this December). The TPP began with three of the smartest trading economies in the world, Singapore, Chile, and New Zealand, and was called the P-3. In 2005–2006, Brunei joined in, making it the P-4. Now the U.S. is involved in negotiations to join an expanded TPP, along with other important trading nations including Australia, Malaysia, and Vietnam. But the Americans want to keep the Canadians out of the club.

The Obama White House has demanded that, as the price of admission to the TPP talks, the Canadians first make their negotiating concessions in advance regarding dairy (and a few other ticklish issues including protection of intellectual property). From the Canadians’ point of view, what then would be left to negotiate? In Ottawa, the prime minister has essentially allowed the Americans to roll him, not putting up much of a fuss about the TPP. Even though Harper won a resounding electoral victory for his Conservative Party in May, he has never seemed to have

felt strong enough domestically to take a strong stand in support of joining the trans-Pacific trade expansion opportunity.

However, if the U.S. has maneuvered to disadvantage Canadian exporters in some of the most attractive Asian markets, it turns out that the Canadians also know how to play this game. Harper has positioned Canada to grab business away from the Americans elsewhere.

For instance, Ottawa and Tokyo have been talking about cutting their own preferential trade deal—a deal that, if it materializes, would leave American exporters to the very important Japanese marketplace on the sidelines. And on July 1, a Canadian bilateral trade accord with Colombia went into effect, immediately giving Canadian exporters of important agricultural products like wheat duty-free access to Colombian markets—access that their American competitors, facing a 15% tariff disadvantage, lack.

Put bluntly, politicians in Washington have only themselves to blame, as Canadian wheat growers are busy signing export contracts that are taking money out of the pockets of the tariff-disadvantaged U.S. wheat growers. The U.S.-Colombia trade deal that was negotiated and duly signed by both governments in 2006 continues to twist in Washington's political winds. Bowing to his anti-trade union base in the Democratic Party that is vehemently against expanding trade with Colombia—or just about any other country—Obama stalled until earlier this year, when he managed to wrest some additional concessions from the Colombians, which has already started taking money out of the pockets of tariff-disadvantaged American wheat growers. It is not just the wheat growers, as other American exporters—barley, pork, tractors, and so on—are also seeing export jobs and profits diminish. Even if the Obama administration (finally!) pushes the Colombia trade pact through Congress this year, the deal would still not be ratified with implementing legislation on Capitol Hill until early 2012 at the very earliest, according to veteran congressional observers. At least, the Americans cannot blame the Canadians for this embarrassment.

Remember that USD 1 billion a day in cross-border trade that Obama and Harper praised so highly? Even where the two leaders understand the importance of working smoothly to facilitate this highly important business, mutual prosperity and jobs are still being squeezed.

3. REGULATIONS THAT CAUSE BORDER DELAYS

The Canadians fume that post 9/11 U.S. security concerns have been adding unnecessary costs to doing cross-border transactions. The Americans reply that the extra security measures have been necessary

but agree that more work needs to be done in cutting truly unnecessary red tape. But cut through the rhetoric, it seems that the Canadians have reasonable gripes. For example, the U.S. keeps talking about hitting Canada with new agricultural border-inspection fees—fees that have little if anything to do with legitimate security concerns—while driving up costs for Canadian food exporters. And shortly after the Obama-Harper glowing promises of cooperation issued at the White House in February, the Obama administration released its 2012 federal budget. Tucked away in the fine print was a USD 5.50 tax on each of some 16 million Canadians who fly to the United States each year.

More U.S. fees, inspectors, and inspections add up to “more border delays” that impair competitiveness, notes Birgit Matthiesen, who formerly worked on trade issues in the Canadian embassy in Washington, D.C., and is now senior adviser to the influential Canadian Manufacturers and Exporters trade group. “Are the additional fees and taxes that decrease competitiveness and threaten jobs the American way of being neighborly?” she asks.

If Obama and Harper cannot find the focus—or political will—to work effectively with each other on issues like the TPP and mutual border-security regulations that would not cause job losses on both sides of the border, imagine their chances of working together with the Indians to plug the dangerous 12-mile hole in the Akwesasne Mohawk Territory.

4. ECONOMIC INCENTIVES TO SMUGGLE

The economic incentive driving today's smuggling through Mohawk lands began some two decades ago, when Canada imposed high taxes on cigarettes. To be sure, there were legitimate health concerns. And over the years, the taxes have contributed to lowering Canadian smoking rates, from 34% in 1985 to just below 18% in 2008, reports Physicians for a Smoke-free Canada. But when a carton of cigarettes goes for more than USD 80 in Toronto and Montreal—more than twice what consumers pay in, say, North Carolina, the fundamental enticement to supply market demands by evading taxes with USD 10–20 smuggled smokes is easy to understand.

Major cigarette manufacturers were the first to exploit the economic opportunities created by the high taxes, exporting cigarettes to the United States and then sneaking them back into Canada through Indian territory. But over the years, the tobacco industry's smuggling was gradually snuffed out in the Canadian courts. R.J. Reynolds Tobacco Co., which sold its international businesses to Japan Tobacco in 1999, was the last major manufacturer to settle. On April 13, 2010, Reynolds agreed to fork over USD 324 million to settle civil smuggling claims brought by Canadian

authorities. Noting the settlement, Reuters noted that when the litigation had been filed in 2002, "Canadian authorities dubbed the conspiracy the largest corporate fraud scheme in the country's history, while R.J. Reynolds blamed the lawsuit on an overzealous anti-tobacco lobby."

These days, its legal problems behind it, the tobacco industry is focusing its energies on curbing the smuggling, as are Physicians for a Smoke-free Canada and other health lobbies.

However, the smuggling continues. Today, perhaps as much as one-third of all Canadian smokers puff the contraband tobacco products. In Ontario, that figure is thought to be more than 42%. Meanwhile, the other smuggling routes for narcotics, guns, and humans remain wide open. According to Canadian press reports, there are Mohawks driving around these days in Hummers and Porsches, building McMansions, and otherwise acting more like Pablo Escobar than respectful representatives of the proud Mohawk culture.

5. INDIAN PERSPECTIVES

The Mohawk community seems to be divided on the subject of smuggling, especially when that smuggling is bringing money into the territory.

Some respected Mohawk leaders like Grand Chief Mike Mitchell have been outspoken against the criminal activities. Last year, Mitchell recalled to reporter Tom Blackwell of *Canada's National Post* how he had written then Prime Minister Jean Chretien in 1998 to warn that the high cigarette taxes would create the wrong economic incentives on the reservation. "We all know that [organized crime] will use the Akwesasne territory as a corridor for the movement of illicit goods, and that the Canadian government will use the Mohawks of Akwesasne as the scapegoats," the grand chief wrote. Mitchell was looking for genuine assistance and cooperation from Ottawa. But the prime minister did not respond.

Douglas George-Kanentiio, an outspoken Indian journalist and activist who grew up on the Akwesasne reservation, has also taken a strong stand against what the criminal activities have been doing to weaken traditional Mohawk values. In his moving 2006 book, *Iroquois on Fire: A Voice from the Mohawk Nation*, George-Kanentiio laments how the illicit tobacco trade had "made millionaires" out of many Indians "while the vast majority lived at or beneath economic poverty levels."

However, others in the Akwesasne community seem content to avert their eyes, considering that the smuggling at least translates into some local jobs. Some, no doubt, would say that it is payback time for the White Man's years of harmful neglect—pointing to poisoned reservation fishing waters, thanks to Superfund sites left behind by Alcoa and General Motors.

In addition, some other Indian leaders stand accused of wanting to grab their share of the booty. Phillip Tarbell, a former Mohawk chief, was arrested on November 11, 2010, after federal agents found some 95 pounds of marijuana in his minivan. The *Water-town (N.Y.) Daily Times* reported that this was "the second time in less than a year that Tarbell has been indicted on drug charges," having been arrested in December 2009 for having about 23 pounds of killer weed in his vehicle. Reporter David Winters recalled that in May 1994, Tarbell had been one of the leaders of a march in which "he helped carry a banner proclaiming 'Akwesasne against Drugs'."

6. LAW ENFORCEMENT CHALLENGES

Some two dozen national law enforcement and intelligence agencies on both sides of the border are scrambling to curb the rampant criminality, along with various tribal, provincial, and state police officials. The Royal Canadian Mounted Police and U.S. and Canadian border patrol agents play major roles, along with the usual alphabet-soup list of well-known U.S. federal intelligence and law enforcement agencies including the FBI, CIA, DOJ, DEA, and AFT. The Department of Defense also has the capability to conduct surveillance missions with Predators from nearby Ft. Drum, N.Y. The Department of Homeland Security in Washington, D.C. is responsible for those slippery bureaucratic words: "coordination" and "oversight" of the soupy bureaucratic mix.

As usual, when it comes to effective law enforcement, Canada's famous Mounties and U.S. and Canadian border patrol officials, who are closest to the scene, have been doing the best work to manage the mess. True, there are the usual issues of information-sharing and inter-agency cooperation when so many different entities always seem to duplicate each other's efforts while vying for credit. But there have also been some very successful, if little publicized, joint operations that nicely illustrate that teamwork can work. And the best of the local cops understand the importance of working with the Mohawk tribal police who operate in the affected communities.

However, looking at the efforts at the higher echelons in Washington and Ottawa is less encouraging. In December 2010, the Government Accountability Office issued a sobering 56-page report on U.S.-Canadian border security issues that singled out the Akwesasne reservation and three other hot spots for special attention. Citing documentation received from U.S. Border Patrol officials, the congressional watchdog agency reported that only "32 of the nearly 4,000 northern border miles in fiscal year 2010 had reached an acceptable level of security."

Homeland Security Secretary Janet Napolitano and other top officials who run the alphabet-soup agencies

sure have plenty of work to fill their days as they deal with each other. They have in-boxes, and out-boxes, meetings to attend. They have memos of “agreement” and of “understanding” to negotiate, draft, circulate, and—here comes the really hard part—implement. They have to spend countless hours dealing with something called the “operational requirements based budget process.” There is a “quadrennial homeland security review report” to work through the bureaucracies. And like all top officials, good days are measured by their number of productive meetings—not necessarily in results. The GAO convincingly documented that more effective oversight is needed.

Perhaps even more importantly, it appears that their time-consuming bureaucratic chores do not leave Napolitano and her colleagues much time left over to work with those closest to the problem: the Mohawk leadership. When Napolitano, then new to her job, visited Ottawa in May 2009 and was asked by reporters what she thought about the smuggling through the Mohawk territory, she acknowledged that that was the first she had heard of such a problem.

7. DODGING QUESTIONS

Even as the bureaucrats struggle, the more important point is that finding a real solution that would involve the Indians themselves is above the pay grade of officials like Napolitano. But the two men in the White House and the prime minister’s office in Ottawa do not seem to be focused either. Neither leader has really reached out to the Indians to see what sort of a deal might be struck. As the respected Syracuse law professor Carrie Garrow has pointed out, when the president and prime minister meet to discuss border issues, the Indians are not in the room.

There is no public indication that Obama has even been briefed on the Akwesasne smuggling and security issues. An exhaustive search of the available public record turned up no evidence that Obama has ever acknowledged the existence of the Mohawk’s 120-mile border hole; no evidence that the current Great White Chief, so to speak, has attended any meetings on the subject or has ever reached out personally to the Mohawk leadership concerning how to plug the hole. When I put the questions directly to officials at the White House office of narcotics control, they went unacknowledged. It was the same story over at Homeland Security and at U.S. Customs. Canadian officials have not been any more forthcoming. Gary Doer, Canada’s ambassador to the U.S. and a former premier of Manitoba, declined to respond to questions, referring them to officials in Ottawa, who also did not respond.

Others who have followed the smuggling issues for years have not had much more success. Neil Collishaw, the Ottawa-based research director for Physicians for a Smoke-Free Canada, says that at lower

levels of his government, there have been discussions with Mohawk representatives. “But it’s mostly been, I’m sorry to report, a dialogue of the deaf,” he says. “The Indians talk about sovereignty and the historical importance of tobacco to their culture, while the governments talk about law enforcement strategies.” In recent years, Canadian health advocates have repeatedly—and unsuccessfully—pressed Harper to insist that the Americans shut down the illegal cigarette factories that operate on the Akwesasne reservation that lies within New York. Neither have the Canadians taken strong action to shut down an estimated several dozen illegal factories on Indian lands inside Canada.

The National Coalition against Contraband Tobacco, also based in Ottawa, represents members like the Canadian Convenience Stores Association, the Retail Council of Canada, and the Canadian Tobacco Manufacturers Council, which are increasingly concerned that contraband cigarettes are taking business away from them. The coalition has given Harper’s unresponsive government a grade of F for its efforts to curtail the illicit trade. Neither did the Canadian businesses get much further when they wrote to David Jacobson, the American ambassador in Ottawa, on November 3, 2010. The letter asked Jacobson to consider “adding your own voice to the call to encourage this issue to be discussed at” a forthcoming session of the Canada-U.S. Cross-Border Crime Forum. A coalition spokesman reports that the group received no response from the U.S. envoy. Insiders report that the Akwesasne issues played a minor role, if even that, when the American and Canadian officials met—as usual.

8. IGNORING THE INDIANS

Homeland Security Secretary Napolitano has asked congress to appropriate USD 55 million “to deploy proven, stand-alone technology that provides immediate operational benefits” to watch the U.S.-Canadian border. New York Senators Charles Schumer and Kirsten Gillibrand have been asking for military-style radars. But the Indians ask, “Why is nobody talking to us? This is our land they are talking about spying upon.”

To be sure, ignoring Mohawks is nothing new. The Canadian Nuclear Safety Commission, for example, approved an application from the Bruce Power Co. to ship sixteen steam generators containing radioactive “used nuclear fuel” along St Lawrence River waters that run through Akwesasne territory. “As a practical matter, and to my knowledge, the Saint Regis Mohawk Tribe was never consulted or notified of any aspect of this planned shipment,” declared Tribal Chief Mark Garrow in a press release early this year. Added Tribal Chief Monica Jacobs, “Obviously, both the United States and Canadian governments had knowledge of

and discussion about this way before the Canadian Nuclear Safety Commission issued a transport license.”

Harper’s “excuse” for his ineffectiveness, at least before the May 2 elections, was that he was then a minority leader who was fighting to save his own political neck. But since his impressive victory in the vote, the prime minister still has not shown any sense of urgency about reaching out to the Indians.

Obama, to be sure, has plenty of other crises to cope with that demand immediate attention. At least, where Indian issues are concerned, the American president seems to have decent instincts. A Mohawk chief was invited to join leaders from the 564 federally recognized tribes to attend a White House Tribal Nations Conference in November 2009—an important symbolic gesture, even if one that has lacked much substantive follow-up.

On February 3, the president took one welcome step beyond the symbolic when he nominated Arvo Mikkanen, a highly respected federal prosecutor and a member of the Kiowa Tribe, to become a federal judge for the Western District of Oklahoma. (Nobody seems opposed to Mikkanen personally, but both Democratic and Republican congressional figures have held up the nomination, fuming that the White House had not shown enough deference to them before submitting the nomination.) If confirmed, Mikkanen would be the only Indian to sit on the federal bench.

Perhaps Obama should ask Mikkanen to explain to him the importance of understanding why, at the end of the day, all issues involving how the government deals with Indians turn on demonstrating a genuine respect for their sovereignty—and then take the lesson to the Akwesasne Mohawk Territory.

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