



*True North In Canadian Public Policy*

# Straight Talk

December 2013

## *Straight Talk:* Celebrating Free Trade

This instalment of *Straight Talk* is based a discussion with Derek Burney and James Baker III that took place at the Macdonald-Laurier Institute's November 21, 2013 Calgary gala marking the anniversary of the 1988 "free-trade election". Burney, former chief of staff to Prime Minister Brian Mulroney, and Baker, former US secretary of state, were the key negotiators of the Canada-US Free-Trade Agreement that was ratified by Canadian voters 25 years ago. The two reminisced about those difficult negotiations and the ensuing political battle, and reflected on the legacy of free trade between our two nations. The discussion was moderated by *Calgary Herald* editorial pages editor Licia Corbella, and has been condensed and edited for clarity.



James A. Baker, III, was the 61st Secretary of State under President George H. W. Bush, and helped guide the country through the end of the Cold War. As the 67th Secretary of the Treasury under President Ronald Reagan, he played a key role in the Canada-US Free-Trade Agreement negotiations. He also served as White House Chief of Staff to Presidents Reagan and Bush. Long active in US presidential politics, Mr Baker led presidential campaigns for Presidents Ford, Reagan, and Bush over the course of five consecutive presidential elections from 1976 to 1992. He is currently a senior partner at the law firm Baker Botts L.L.P.



Former ambassador Derek Burney became Chief of Staff in the Office of the Prime Minister in 1987, where he was directly involved in the negotiation and successful conclusion of the Canada-US Free-Trade Agreement. Mr. Burney served as Canada's Ambassador to the United States from 1989 to 1993 and played a central role in the negotiations that led to the North American Free-Trade Agreement (NAFTA) and the conclusion of the Acid Rain Treaty.

Mr. Burney was appointed Chairman and Chief Executive Officer of Bell Canada International (BCI) in 1993. He is currently senior strategic adviser at Norton Rose Fulbright in Ottawa.

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**Licia Corbella: Recognizing the importance of the Canada-US Free-Trade Agreement is easy now, 25 years after the fact, but it was a huge risk politically for Prime Minister Brian Mulroney and his caucus. Why was that risk worth undertaking, Mr. Burney?**

**Derek Burney:** It was a big risk, there's no question about it. In my view it was an act of political courage on the part of the Prime Minister because everybody knows that the basic economic theory for free trade was pretty compelling, but everybody also knew that for Canada the political risk was substantial. It's infused by our history; we had previous free-trade elections where it was defeated and so there was a lot of political risk associated with it. But, Mr. Mulroney was elected and one of his primary objectives was that he wanted to restore a good relationship with the United States and it wasn't just on trade, it was across the board. He wanted to get rid of things like the National Energy Program – I don't have to tell anybody in Alberta about that. He wanted to change some of the investment review mechanisms in Canada. There was a broad agenda of co-operation with the United States that he was seeking.

Free trade came about in part because he saw that as a fundamental element in the relationship. I think it's important for people to understand that he knew that it had positive support in the West and in Quebec and those were two pillars of Mr. Mulroney's government, politically. Eventually it got the support of seven of our premiers and I think that was significant. Intellectual support came from the Macdonald Royal Commission. Now, Canadians will know that Donald Macdonald was a nationalist liberal under the Trudeau government, so it was quite surprising when he came out recommending, after an intensive analytical study, that we take the risk, a leap of faith he called it, and engage in free-trade negotiations with the United States. So, we all knew about the risk going in, but we had no idea just how electric the election in 1988 would turn out to be.

**Licia Corbella: So, why was it such a big issue during that election?**

**Derek Burney:** There's something called the Senate in Ottawa – you've been hearing about it lately. Back in 1988 our Senate refused to approve the Free-Trade Agreement even though it had been negotiated and approved by our House of Commons. The Senate rejected it because the Senate was under control, at that time, of the Liberals and the opposition leader of the day said to let the people decide. So, he basically forced the Prime Minister to call an election. An election was due in 1988 anyway, but this conspired to make it an election about free trade. So, it was one of the rarer single-issue election campaigns we've had in our history and it certainly dominated the seven weeks of the campaign and it was quite a roller-coaster as I recall.

**Licia Corbella: It has been described by some historians and journalists as the most vicious and vitriolic negative election campaign ever. What were some of the things that were being said, and what made it so vicious?**

**Derek Burney:** Canadians were warned that they were going to lose their health care; they were going to lose their social programs and lose their water. Virtually everything we had was going to be lost as a result of free trade. We were accused of selling our country out; we were called traitors in open assemblies. I can recall that both the Prime Minister and my mother got quite agitated because the opposition leaders came into senior citizens' homes and told them that with free trade the Americans were going to come in and kick them all out. So, we both got calls saying, what on Earth are you guys doing?

So, it's a little hard to try and convince people who have had the politics of fear used like that and teach them the comparative advantages taught by David Ricardo. The language was quite vitriolic. But the rebound was equally profound. I had football coaches coming to my door in Ottawa offering me TV scripts that we could use to try to instill some confidence that we could actually compete in North America. I always felt that what we were up against more than anything else was the kind of nationalism which has its ugly stepsister in Canada – anti-Americanism. Let's face it, that had

more to do with the opposition than anything that was actually in the agreement because if you actually looked at the agreement none of the dire threats were ever going to transpire. In fact, the happiest note I can give you is that many of the strongest opponents of the free-trade deal politically became champions of the agreement once they were elected to office in 1993, so I take a little bit of satisfaction on that factor alone.

**Licia Corbella:** Even though the relationship between Prime Minister Mulroney and President Reagan was personally very close and amicable, the deal took a lot of very hard work. It took about two years from my understanding and came down to the very last moments prior to midnight on October 3, 1987, the deadline that was set under the congressional fast-track provision. So, Secretary Baker, perhaps we'll turn it over to you, what are some of your most vivid recollections of negotiating the deal on that night?

**James Baker:** Free-trade agreements are tough, they are difficult, they are easy to demagogue against, they are very hard to sell. We had our problems with it, we didn't have the horror stories that you just related about the giant colossus to the south that's going to come up there and kick all your people out of the hospitals and so forth. It must be really difficult to live next door to the United States. I don't see how you do it. I don't see how you've survived all this long, but the most remarkable thing I want to tell you about this Free-Trade Agreement, is that it happened at all.

I think we had about 20 minutes on the clock before the time for fast-track authority as far as US Congress was concerned would have expired. The last issue we were dealing with was the dispute settlement mechanism which many of our senators and congressmen thought intruded on the sovereignty of the United States. This was a very big issue, but it was only one of the issues. All issues in free-trade agreements are very, very difficult because there are always losers. Generally, the general economy, the general creation of jobs and that sort of thing is always a plus, but there are interests and sectors that get gored and they are very vocal.

We never would have gotten it but for the top-down leadership of Ronald Reagan and Brian Mulroney – the political courage if you will – because they decided they wanted to do this and they made it happen. In Canada, you had one party that was for this and one that was against it. That's not the way it really worked in the United States. The opposition in the United States was more in the centre and we had the left of the Democratic Party and the right of the Republican Party that had historically been for free trade who were really sort of supportive of the idea of trying to negotiate a free-trade agreement with Canada.

There were a lot of tense moments, as Derek will remember. Many times discussions broke down and had to be restarted and reinvigorated.

**Licia Corbella:** So, recall for us, if you will, what happened in those last 20 minutes? What happened that changed things?

**James Baker:** Well, we were arguing over this dispute settlement mechanism. Canada wanted some sort of a forum to which it could take US unilateral trade actions like dumping, countervailing duties, and things like that, that we had the authority under our law to impose if we thought countries were subsidizing exports to the United States and those kind of things. Canada said, you know we really can't go along with a free-trade agreement unless there's some way that we can contest these actions. We need some sort of dispute settlement mechanism and we finally agreed upon one that created a commission that was composed of both Americans and Canadians to which we would refer these disputes and as a matter of fact, that dispute settlement mechanism that we came up with ended up being the same form of dispute settlement mechanism as we use for NAFTA. This free-trade agreement with Canada was extraordinarily important to both countries. It laid the ground work for NAFTA which in turn laid the ground work for the Uruguay round of trade negotiations and the WTO. Without the Canadian free-trade agreement we wouldn't have gotten any of those and of

course it increased a two-way trade in investment between Canada and the United States. So, it did an awful lot of good above and beyond just the agreement itself. As the Duke of Wellington said about Waterloo, it was really a near run thing; it came very close to failing.

**Lucia Corbella:** Do you remember, Mr. Burney, what it was like in that room? You were in Washington, D.C. I understand.

**Derek Burney:** Well, the Canadian Senior Delegation met in Secretary Baker's anteroom – that was our office. We had plenary sessions in his board room and we had those over a marathon two-day period, October 2nd and October 3rd. As Secretary Baker has said, issues would come to the plenary table, the negotiating teams would tell us what had been agreed and what had not been agreed and we had to decide then and there whether we were going to resolve them or put them aside for a more private dialogue that he and I would have or others would have.

But, it came down to the evening of October 3rd and at seven o'clock that night I was pretty discouraged because we hadn't seen anything on dispute settlement, which we had said was a *sine qua non* for Canada. We always said, by the way, that no deal was better than a bad deal – that was one axiom. The other axiom we had was, never let the best be the enemy of the good. We had to keep being reminded that we were not looking for perfection here. We were looking for something that would be good for both countries, that would meet our prime minister's direction to us which was to have something that would make our trade relationship significantly better than what we had. So, at about seven o'clock I called the Prime Minister from the anteroom and he was at Harrington Lake. I said, I'm sorry I don't think we're going to get a deal, I don't think we're going to make it in time for the deadline. It wasn't for lack of effort, we were trying and I knew Secretary Baker was trying very hard to convince his own delegation as well as some congressional figures to go along with a notion of a dispute settlement mechanism which was totally new. I mean, this was not something we had picked off the shelf somewhere. This was something that was put together because we had struggled to get a common definition of subsidies, and that proved impossible.

Anyway, the Prime Minister then asked me to tell Secretary Baker that he wanted to call the President. So, I went and reported that to the secretary and he said, give me a few more minutes. So, I went back and waited in our office and I think around 10 o'clock – Jim, if I can tell the story and quote you verbatim – you came storming into the anteroom where eight of us were seated, you had a little piece of paper in your hand and you said, "There's your goddamned dispute mechanism, can I now send the report to Congress?"

I looked at it and it was just handwritten and there was nothing formal. I showed it to the group that was around me, including two of our ministers, Mike Wilson and Pat Carney, and it looked okay to me. So, I said okay. I then phoned the Prime Minister again and by this time he had come downtown to Ottawa. He was going to have a press conference in the Langevin Building and I said, "Just a minute," I said, "I think we might have a deal after all". He said, "Really?" and I said, "Yes, I think so. We just got something on dispute settlement". He knew that was the major outstanding issue and he said, "Do you all agree?" So, I had to poll each of the members because he told me going out, he said, "I don't want any split decision Derek. You bring that team together united; otherwise, I won't be with you". So, I had to make sure I had the other seven with me and so I went around and they all said, "Yes, Prime Minister, this is a good deal for Canada". Then he really stumped me, Licia, he actually said and I'm not just saying this because I'm in Alberta. He actually said, "So, Derek, tell me, how is it going to play in Drumheller?" Well, how the hell did I know? So, I said, "Well, it's good on energy and red meat, so I think it should be okay in Drumheller." He said, "Derek, that's great. That's just great".

**James Baker:** At one point I recall Brian Mulroney saying – I think he said this to me, Derek, maybe he said it to you – I think he said, "You know, I want you to tell me how it is that the United States of America can negotiate a nuclear arms agreement with the Soviet Union, but can't negotiate a free-

trade agreement with Canada”. Now, my recollection is when you told me that Brian wanted to call the President, my recollection is I called the President and said, “Mr. President, here’s where we are. This dispute mechanism is absolute poison to a bunch of important senators on the Hill. They don’t like it, they think it’s an intrusion on our sovereignty, but you are not going to get your free-trade agreement if you don’t come up with some sort of dispute settlement mechanism agreement”. I think that’s how we finally got there, Derek, but that just shows you the degree and extent to which I think both of those leaders committed politically and had the courage of their convictions, how much they wanted that agreement to work. Boy, in retrospect, was it important for future relationships between the two countries, but also future global trade and investment agreements?

**Derek Burney:** Well, I can remember too before we went to Washington for this two-day vigil in October, I met with the full cabinet at the Prime Minister’s instruction to give them a sense of where the agreement was and what we thought was possible and what we thought was not possible. Well, you never heard a more raucous cabinet discussion than followed from my presentation. Then, the Prime Minister looked at me and said, “Well, now you know what the lay of the land is, Derek, so you go to Washington and do the very best you can”. So, I’ve often said it was kind of like when Lincoln’s cabinet vote was sometimes 10 to one, but the one was Lincoln and so that’s the view that prevailed. A lot of the Brian Mulroney cabinet discussions were a bit that way and the one guy carried it and, Jim is absolutely right, if we hadn’t had President Reagan and Brian Mulroney – and if they hadn’t had the personal relationship that they had which is one of immense trust between leaders, almost affection I would say, I mean we were the implementers of their courage to secure the deal. I agree with Jim, I think none of us knew at the time that it was going to be as good economically for both countries as it’s turned out to be. Trade has tripled between Canada and the United States, Canadian investment in the United States has increased tenfold. American investment in Canada has increased sevenfold. So, nobody can dispute the statistics; in fact, nobody does dispute the statistics. I think it’s interesting; we’ve just negotiated a major agreement with Europe now. There hasn’t been a ripple of any kind with the kind of nonsense we put up with on the Canada-US agreement. Why? I think we finally put paid to some of those outlandish claims.

**James Baker:** Yeah, without the Canada-US Agreement we would’ve never had NAFTA and NAFTA has really boomed in terms of increased trade and investment. But the thing that really was the toughest for us – I know you hear all those horror stories about how we’re going come up there and give you AIDS and kick you out of your old folks’ homes and all of that stuff – but, the toughest thing for us was every time we wanted something in terms of access to your market I would be told, no that’s cultural. We can’t do that – that’s cultural. I took that for about a day and a half or so and finally I think I turned to Derek and I said, “I want to tell you something, Derek. I’m going to tell you what’s cultural in the United States: automobiles”. And that sort of kept down a lot of the culture talk.

**Derek Burney:** And, of course, his counterpart Clayton Yeutter, the US trade representative, quite proudly told me in one of these sessions, “We know all about your culture. My wife and I were married in Niagara Falls”.

**Licia Corbella:** Looking at the kind of leadership that existed then and looking at what’s going on particularly in the United States right now, I’m wondering if you think this kind of a deal would have been possible?

**James Baker:** It would be much more difficult I think because we have a certain ugliness that has crept into our politics here. We have a divided government once again and there’s a lot of anger and antipathy and not a lot is getting accomplished. These free-trade agreements are so tough that if you’re not getting basic stuff done it’s going to be very, very hard to get free trade done. Now, the Bush Administration, when they went out five years or so ago, they negotiated free-trade agreements with South Korea, Panama, and Colombia. Well, those things just sat there in Washington for four years before the current administration set them up to be ratified by the Senate. Now, they are up there and the administration, I think, is trying to get them ratified and they say that they’re going to

pursue a free-trade agreement with Europe just like you've negotiated one. I really hope that's true because there are always more winners than losers in free-trade agreements. If there's one thing we need down here in the United States now it's more jobs, more economic growth that will create those jobs, and free-trade agreements to do that. We're also told that we're going to try and negotiate an Asia-Pacific free-trade agreement, and that would be a very healthy thing. The one thing that we all held out high hopes for after you had the Canada-US Free-Trade Agreement and then NAFTA, was that we would have a hemispheric free-trade agreement, which would be really important to Canada, the United States, Mexico, and to other countries in the hemisphere. We have never gotten there; we let fast-track authority in the United States expire in the face of the 1996 presidential elections because labour was opposed to it. President Clinton was very courageous in the way he got NAFTA ratified over the objections of his labour constituents, but he did not demonstrate the same political courage in trying to get fast-track authority for our hemispheric free-trade zone even though he did say in 1995 down in Miami that we wanted to pursue a hemispheric free-trade zone. That's still out there and that ought to be done. That would be very good for Canada and very good for the United States.

**Derek Burney:** Perhaps I should explain more about fast track, what it means. The fast-track authority that Secretary Baker is speaking about is the authority that Congress grants to the administration to negotiate a trade agreement. That means if the administration then goes and negotiates a trade agreement, it's subject to an up or down vote by Congress and not "I like this but I don't like that". That's the reason why fast-track authority is helpful, because it would be very difficult to negotiate with the United States if whatever you negotiated was then subject to congressional scrutiny.

**James Baker:** Yeah. It's critical. You won't get a free-trade agreement if you don't have an up or down vote.

**Derek Burney:** The other element of it that was vital in our case is that there was a deadline. If there hadn't been a deadline he and I might still be negotiating for all you know, eh? No, seriously, while the multilateral trade round and while so many of the other trade negotiations seemed to go on and on and on like our negotiation with the Europeans – no deadline. If you don't have a deadline it's very easy to just push it down the road a little bit.

**Licia Corbella:** What remains undone with regard to trade between our two countries?

**Derek Burney:** Well, I guess the one regret that I've had since NAFTA is that we have not used NAFTA as the template together in going towards other agreements. We started with Chile individually and ever since then Canada, the United States, and Mexico, instead of using NAFTA and the combined weight of NAFTA as a negotiating force, we've gone individually. But, there's not much you can do about that at this point. As Jim has said, we have negotiations in Asia. Canada and Mexico are involved in those. We've just done Europe, the United States is engaged with Europe. They have done Korea; we're still negotiating with Korea, so we're getting to the same end but we're doing it in a ramshackle kind of way.

There are obviously things that we didn't deal with totally in the free-trade negotiations, some of which were picked up in NAFTA and clarified. Procurement is a good example. The reason why Canada is still getting a lot of hassle on buy-American provisions out of Washington today is that the deal we did on procurement only affected federal government agencies, not provincial, not state. So, the wrinkle that they are using on buy American now is the money is going to the states for the states to spend and Canadian companies cannot bid. Well, the reason we couldn't do that was that we couldn't get our provinces to sign on to a procurement code and neither could the Americans get the states to, so that was one element that was missing. Softwood lumber, I don't want to resurrect that old one, but softwood lumber was left out of the Free-Trade Agreement because we had what we call a managed trade agreement that preceded the Free-Trade Agreement. So, we were not able to undo that in the free-trade negotiations because we had a separate agreement in place and as a result,

softwood lumber has never been subjected to the FTA or NAFTA and we've had a series of rolling managed trade agreements in order to deal with our differences on that.

But, as I said, my single biggest regret is that we didn't make better use of – as Jim has talked about – an agreement for the hemisphere. Well, NAFTA was the perfect vehicle for that. It was established as a template to serve other agreements and we haven't done it as much because there hasn't been the political will to get it done. Not just in Canada, throughout the hemisphere.

**Licia Corbella: What other regrets might you have and what implications are there now?**

**Derek Burney:** Licia, I don't have a lot of regrets. And, as a good negotiator I would never tell you what they were even if I had them. Ask him!

**Licia Corbella: How about you Secretary Baker, any regrets on the deal?**

**James Baker:** No, we came up with a good deal for both countries. It's proven to be a good deal. Derek gave you the figures and statistics. My biggest regret is that we didn't take NAFTA and expand it into a hemispheric free-trade zone. That would have been a wonderful free-trade agreement; that's what we should have done and that's what we should do at some point in the future. The stars are not really aligned very well right now in my view, but it's something that would generate additional economic growth and create a lot of jobs. It would be a very good thing to do.

**Licia Corbella: Well, speaking about getting our products around, I'm wondering what you think about the Keystone XL pipeline. Do you think it will be approved by President Obama and do you think it should be approved by President Obama?**

**James Baker:** Hey, you're talking to somebody sitting here in Houston, Texas in the energy capital of the world and you're asking me if I think the Keystone XL is a good deal – damn right it's a good deal and it ought to be approved. Will it be approved? I don't know. I have no idea if it will be approved, but it should be approved, absolutely. It will create jobs in this country if for no other thing and it will supplant some oil that we are now importing from Venezuela, which is not a particularly reliable supplier in my view. I've always said it's a no-brainer, but then I'm not sitting in that round office up in Washington, D.C. where I spent so much time years ago.

**Derek Burney:** I would just add, if I may, that the energy chapter of the FTA and NAFTA is quite explicit in that Canada offered security of supply, even during times of constraint, to the United States – unfettered supply in exchange for unfettered access to the US market. I think a very good argument could be made that by refusing to grant a permit for this pipeline, the United States would be in violation of the NAFTA and FTA Agreements; that's my personal view. It certainly would violate the spirit of the chapter if not the letter. But, because it is a no-brainer, let's hope there will be a brain found somewhere in the Oval Office and get it approved.

**James Baker:** Derek, if I was still Secretary of State, it would have been approved by now.

**Derek Burney:** And I know that.

**Licia Corbella: If Canada did manage to get the Northern Gateway pipeline built to the West Coast and we do reverse another pipeline and get our oil going to the East Coast, would we, under NAFTA rules, as you've just described, be able to say to the Americans, because you won't allow access with the infrastructure we no longer have to guarantee supply? Would we be able to do that?**

**Derek Burney:** Well, I would hope that it would not come to that because they still are 10 times bigger than we are and you don't get into a tit-for-tat fight with somebody 10 times your size. But, I do think there's scope for all three. I think we have a need for pipelines east, pipelines west, pipelines south, because we have a growing supply coming. I think it's only going to be good for

Canada if we get access to more than one market for our energy exports. It's never good business to only have one customer for whatever it is you're producing.

**James Baker:** It's never good business to have a trade war either.

**Derek Burney:** There's no winner in that one.

**Licia Corbella: Secretary Baker, if we could, how do you see the 2016 presidential election unfolding in the United States?**

**James Baker:** Well, just like a lot of other elections have unfolded in the United States, I think there are a lot of people out there who would like to write off my party in 2016 because we've got some internal problems, because we're out of power. But, if you go back and look at history you will see that the way our system works down here, the party out of power always looks impotent, disorganized, can't get anything done, no leader. Then, the day will come when they will nominate someone and the party usually always coalesces behind that nominee. I mean, if you think about it no one saw Bill Clinton coming. The big name Democrats didn't run in 1992 against George H.W. Bush because he had a 90 percent approval rating after Desert Storm. Barack Obama came from nowhere, a one-term senator – this can happen and it happens all of the time.

I think back to 1992 particularly because that was a campaign that I was chairman of for President Bush. We had been in the White House 12 years. It's exceedingly hard to keep the White House 12 years in a row. Now, in this coming next election, for the Democrats to win they will have to be able to hold the White House for 12 years; that's hard to do. So, I think we've got an excellent chance notwithstanding the fact that nobody knows who the Republican nominees are going to be. There are internal problems within the party, but all I would say to you is don't count us out. These things can turn – Derek will tell you – overnight is an eternity in politics and we've got three years, so we've got a long way to go.

**Derek Burney:** Don't ask me about 2015 in Canada. I'm not going there either.

**Licia Corbella: Is there a scope for improvement on the deals that we have with the United States?**

**Derek Burney:** I think there is always scope for improving our relationship with the United States, provided there's the political courage to drive us in that direction. You know, a lot of things have happened in the last 25 years. As a result of 9-11 we've got a lot of stuff going on at the border that isn't efficient in terms of the movement of people, goods, and services. So yeah, I think there's always scope if there is persistent political effort from the top, as we had, and those were very good times, not just under President Reagan, but under President Bush 41 as he was called when Jim was secretary of state. We had an excellent relationship between our two governments throughout that whole period.

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