OPINION

BREXIT

Time for the Three Amigos to make a statement on trade

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In the aftermath of the astonishing Brexit vote and its implications for international free trade, the upcoming meeting of North American leaders is drawing an exceptional degree of attention. After all, the North American free-trade agreement is one of the longest-standing and, to date, most successful agreements to freely trade goods, services and investment.

Now is the time for Prime Minister Justin Trudeau and presidents Barack Obama and Enrique Pena Nieto to make a forceful statement that free trade has been the reason for the increased prosperity of the world and our three countries for the past 25 years. Any retreat from this progress will have dire consequences for the future of our children.

With its ambitious free-trade agenda – including the pending comprehensive economic and trade agreement with the European Union, the Trans-Pacific Partnership agreement and a free-trade deal with China – it is imperative that Canada not meekly accommodate treaty violations, in law or spirit.

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Patrolling the perimeter of a complex, multilateral trade agreement is a task that requires relentless vigilance. While every political leader enjoys the opportunity to share international photo opportunities with voters, it's one thing to sign a high-profile trade agreement – the real challenge and obligation is to manage the intricate mechanics.

If Canadian companies, large and small, are expected to do their part by expanding internationally and investing their capital in foreign jurisdictions, they need to know that their government is fully committed to basic principles, such as fairness and the active protection of their interests.

A supportive national government, furthermore, establishes a crucial precedent: That Canada holds its trade partners to the highest standard of integrity and will not be easily pushed around by them.

This is a particularly important message to send to China, which has already displayed a tough negotiating stance with Canada by demanding the construction of a West Coast oil pipeline in exchange for a free-trade agreement. And there is no question that China will be watching the tone and content of the upcoming NAFTA summit with interest.

Of the many major issues to be discussed by the NAFTA leaders, there is a relatively small one that may well be swept to the side at great long-term cost to all the NAFTA members.

The dispute between a small Canadian mining company – Primero Mining – and the Mexican government's tax authority, which has abruptly changed the tax framework for the company and demanded retroactive compensation, is best described as the trade equivalent of a canary in a coal mine.

Like many companies, Primero Mining invested in the development of a gold and silver mine in Mexico based on a specific tax framework. In recent months, as the price of oil has fallen and exerted pressure on public coffers, the Mexican tax authority has abruptly changed the tax structure for a number of large multinationals. In some cases, it has withheld hundreds of millions of dollars in legitimate tax rebates as leverage to force the renegotiation of tax terms.

In the case of Primero, however, Mexico is making a targeted demand – a retroactive payment for the period its tax framework has been in place. It would be like you or me filing and paying our income tax five years ago, and now being told the law in place at the time no longer applies to Canada Revenue Agency and it just wants more money from you. You would be shocked and feel mistreated, as Primero justifiably does now.

The company has now filed an international challenge under the NAFTA dispute resolution provisions. While that dispute is being reviewed, uncertainty is understandably overshadowing Primero's plan to continue investing in Mexico. Moreover, uncertainty will likely begin to grow for all investors in Mexico.

At a time when the principles underpinning the free trade of goods, services and investment are vulnerable and its benefits are being closely scrutinized, governments that support its expansion face considerable new headwinds.

If Canada intends to position itself as a champion of global and free trade, it needs to ensure that it is also recognized as a champion of the rules and their fair enforcement. To do otherwise is to jeopardize existing – and future – free-trade agreements.

The author has represented clients in the mining field but writes here on his own behalf.

GLOBAL ECONOMY

Four things you should know about Brexit (and beyond)

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1. Little Britain
Far from the grand promises of the Leavers, the sovereign choice of the British people will prove to be a boomerang. Britain has always preferred to punch above its weight class, but it will find its traditional immense pride in global status gravely diminished.

Britain will also come to realize that its past greatness did not rest so much on its own ingenuity, but rather its ability as an imperial trading country to leverage the sweat of others for the benefit of domestic wealth (see India, China, Africa).

Britain's interest in the preservation of global status may be rightfully characterized primarily as a concern of the country's elites. However, the majority of people who voted for the standalone island mentality will find that, left to its own devices, it will suffer. That will manifest itself not least as major global companies over time cease to use the country as their primary European operating basis.

2. Going after the wrong target
Britons, in their majority, falsely chose to blame Brussels. Since a sense of spreading economic uncertainty – which a majority of the population feels rather directly – ultimately determined the outcome of the vote, it would have been more appropriate to "blame" China.

That country, not the European Union, is surely the major factor shifting global economic realities. There is just one problem: In grand historic lines, after an absence of almost a century and a half, China is just trying to take its rightful place in the global economic firmament.

Lest we forget, China used to dominate the global economy until the British started the Opium Wars – a crude imperialist manoeuvre that, in its ultimate consequence, also delivered China into the hands of communism and Maoism.

A particular irony of the Brexit campaign is that the Conservative government has even sought to cozy up to China. In what may be a precursor of Britain pursuing special deals with countries around the globe, it sought to position itself as China's preferred partner in Europe.

That is a difficult choice to make for a country that had based its economic strategy more or less on deindustrialization.

Regardless, count on a rigorous display of Chinese pragmatism. The Chinese always like to exploit a weak target – with all the more delight as they see Britain, with good reason, as its former economic oppressor and a perpetrator of great historic injustices.

Even worse, they will now look at Britain – about to throw away its major economic asset, to be a convenient platform for access to the EU market – more as a larger Greece than an important partner.

3. Globalization in trouble?
Perhaps. But only for those who think very superficially. National solutions only go so far. The ultimate hope behind the Brexit vote – to turn back the clock – isn't just wishful thinking, it's delusional.

For all the current worries about domino effects on other countries becoming keen to pursue exit options of their own, the British example may serve as a "live" example on why not to opt for that choice. There is next to no evidence or prospect that it will be better off economically once Brexit becomes a full-blown reality. That hope is resting on fumes.

Globalization is here to stay. To the extent it can be managed – and that must be the key goal of politicians and societies everywhere – that strategy is much more effectively executed as part of a larger group than as a standalone country.

Yes, that implies the loss of sovereignty, but also a gain in terms of co-insurance.

4. Black Friday for Europe?
There is a great deal of hand-wringing in all quarters. How could we "sell" the EU better? Is the European Commission too arrogant and too removed from the people's concerns? Do we have to reinvent Europe? Does it have to become more democratic, warm and fuzzy?

The answer to all those questions, of course, is yes. The only question is: What does that mean in the real world?

By necessity, Europe and the European Union are imperfect creations. But that is not a "failure of Europe," as is so readily argued. Rather, it is part of the human condition.

We need to become mature enough to understand that perfection really isn't an option. We need to understand that life is a sequence of – often painful – tradeoffs. Countries are free to make their own sovereign choices. But they have to live with the consequences of those choices and votes.

Most simply put, globalization means rainy weather for many countries. It exposes most people in Western societies to the uncomfortable realization that a direct feeling of insecurity is no longer just a concern of the global south.

The question is, to the extent that an umbrella can be provided, whether the nation state is really the best tool for offering that protection.

FINTECH

Someone took down the DAO. Here's why that's astounding

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The strangest thing happened the other week. Someone managed to take (some people say steal) $76-million worth of a digital currency named ether, created on a blockchain called Ethereum – and no one reacted. Not on Bay Street, not on Wall Street.

I mention Bay Street because Ethereum was born in Canada, but has since picked up its financial-technology team and relocated to Switzerland.

The $76-million that went missing was part of the investor funds that poured into something called "the DAO," created partly by Ethereum. DAO stands for Distributed Autonomous Organization.

For you non-fintechs, the DAO is an anonymous and autonomous public corporation on the blockchain – literally a bit of coding that operates without directors, officers or management. What operates it is a machine.

To raise money, the DAO sold tokens online to investors that were tied to the price of its digital currency. Each DAO tokenholder acquired typical shareholder rights, such as the right to vote on corporate matters and to earn corporate dividends. The DAO was really a hedge fund, only decisions on how and where to invest the pooled funds from investors was decided democratically by token-holders casting their votes for investment projects they liked.

The DAO raised more than $200-million by crowdfunding from hundreds of investors in Canada, the United States and the European Union, and broke a world record with the most amount of money ever raised by crowdfunding. Now, just weeks later, much of it is gone.

Ethereum's claim to fame in the blockchain space is the development of something called "smart contracts." They are often touted as legal contracts, enforceable on the blockchain, that will change the practice of law and essentially the entire judicial system by eliminating the need for lawyers to draft contracts and judges to enforce them, since these "smart contracts" can do both better and faster.

A lot of the talk about smart contracts on the blockchain is nonsensical. As a matter of technology, the blockchain can neither draft legal contracts nor administer justice by enforcing them. All the blockchain can do is release or not release a digital currency payment from escrow to a party to fulfill the terms of a contract when a condition precedent is met. That is not contract enforcement – it's the precise opposite.

Moreover, it's against the law for technology firms that have not partnered with a lawyer to sell technology to the public that engages the practice of law. Those laws exist to protect the public and the integrity of justice. So even if there was blockchain technology that could deliver legal services to the public, tech firms couldn't do it without sign-off from law societies.

A couple of weeks ago, a DAO token-holder was able to use the smart-contract system to code a "child DAO," a subfund of the main fund, and divert $76-million into his own wallet. He then tweeted that he had diverted the funds after obtaining advice from his lawyer that it was legal for him to do so under the terms of the DAO's smart-contract system. Whether he is right or wrong is irrelevant – what's relevant is the astounding fact that people set up a corporation that, by design, gave token-holders access to the corporation's digital currency reserves, where they could remove $76-million.

Although just weeks old, the DAO is now apparently bankrupt, and there is likely no chance that the $200-million will be returned to investors. Some of the parties involved are going to need those lawyers and judges their smart contracts were supposed to eliminate.

In the end, those smart contracts seem pretty dumb after all.

DILBERT