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## Discussion following the Remarks of Meredith Broadbent and Simon v. Potter

Discussion

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DISCUSSION FOLLOWING THE REMARKS OF MEREDITH  
BROADBENT AND SIMON V. POTTER

MR. CAMERON: Henry, at least they get the microphone there right on time.

DR. KING: Okay. My view is that one of the deterrents, I believe, to innovation is counterfeiting, and what I'm concerned about and would like to get your comments on is international rules against – trade rules against counterfeiting.

This is particularly true in the China area and has been true in, I understand, India in the past. So you have got a problem with an invention, which is being reproduced overseas without benefit of clergy. That's what I'm concerned about. So maybe you have some comments on that.

MR. POTTER: Meredith?

MS. BROADBENT: Yeah. I am a little out of my league on the international property protection aspect of the trade relationship. I know there have been some concerns by the United States with how Canada enforces some of the anti-counterfeiting laws at the border, but I do agree with you that that's a very important part of trade that we need to look further into.

MR. POTTER: Since this is the Canada-United States Law Institute, I think it is worth saying that Canada and the United States are in agreement on that issue; that it is a major problem, and something has to be done.

The fact is, we had a lot of counterfeiting in technological goods in the CDs and the DVDs. We have seen the reaction to that recently with web sites, which allow you to download movies new rather than buy them for a dollar on the streets of Beijing.

My own view is that it is going to be a very, very difficult thing to police that and to eradicate the counterfeiting, not that we shouldn't try, but I believe it requires a reaction, which is not just Governmental. It requires technological solutions as well, which I think we are seeing in this downloading, for example.

DR. KING: And enforcing patent rights, too?

MR. POTTER: Well, yes.

MR. CAMERON: I think it is useful to add on to that point that it does seem a lot of the issues – I think it is difficult to regulate and to control the counterfeiting. But as you see, the evolution, let us say, in Korea, a place that was known as a counterfeiter of some things.

At least everybody who bought cabbage patch dolls when they were going over there knew about that, but the regulations tightened as the companies and as the corporate culture there matured, and their companies got a greater stake, and they became major players in the global economy.

And they, too, had interests in taking care of those issues. And I think that part of what you also have to look at is the evolution of the economies. Yes,

patent rights are very important, but when the United States started out and we had no technology, actually cloning somebody else's patents weren't such a bad idea.

It was when we decided we wanted to be a manufacturing country and not an agrarian country, all of a sudden these things started to take on a different viewpoint.

MR. POTTER: There is a mechanism for stopping counterfeit goods and patent infringing goods at the border. Canada doesn't have a real mechanism there, and I am sure that part of what the USTR is after when they put Canada on the watch list and identified pirated goods as a problem, is a hope that perhaps Canada would give itself that kind of weapon at the border, at least that opportunity for plaintiffs to stop stuff before it actually comes in.

And maybe Canada will, but that will not stop other markets being flooded by the pirated goods, and we can –

DR. KING: You are talking about Section 337?

MR. CAMERON: 337. Michael?

MR. ROBINSON: A very small point: I guess it is personal privilege on behalf of my former partner Alan Rock [who is] mentioned in the litany of hypocrisies. I would just say that I agreed with everything that happened when Mr. Rock grabbed temporarily or otherwise the patent on the Anthrax strike.

In his defense, though, when you say that he gave it to a former client, the client had already fired us by then. So it wasn't the client at the time.

MR. POTTER: I see.

MR. CAMERON: What's your question, Michael?

MR. ROBINSON: No question. I am just defending Rock's honor to the extent it is defensible.

MR. CAMERON: I am sure he will appreciate that defense.

MR. ROBINSON: But he was my partner.

MR. DELAY: To a definition, would a person who had an organ transport qualify as an LMO, live modified organism?

MR. POTTER: Meredith?

MR. POTTER: Don't know.

MS. BROADBENT: Don't know.

DR. BARBER: I was just wondering, Meredith, in the discussions of all the things you have on your plate, does the issue of the burgeoning Chinese economy come up as anything that feels like a threat or requirement for change or anything like that?

MS. BROADBENT: Well, I think that is where Canada and the United States have a really, probably common concern. I think our trade deficit is much greater with China, and it is a very difficult political issue in the United States at this point. We have import restriction legislation that is pending in

the Senate and a lot of concerns about currency manipulation and so forth in China.

I think where we are having the most success with China is on the dispute settlement side where the United States took the first case against China. It was related to a discriminatory tax on semiconductor production, discriminatory bad tax, and was able to reach a compromise solution on that, which solved the discrimination.

And we just recently filed a case relating to auto parts and some discriminatory import tax on auto parts and cars. And I think more and more the United States is probably going to look to our major trading partners that are trying to keep the trade system together, to kind of approach China together or in turn and not just have sort of one country taking cases against China.

I think we all have a stake in getting China into the rules-based trading system. China has made some progress, but there is a long way to go, and China needs to get used to the fact that as a major trader and a major beneficiary of the trading system, that they are going to have lots of litigation against them, and I think, you know, welcome to the world of United States-Canada trade.

We sue each other all the time, and it is not that big a deal, and the Chinese seem to be very effective at intimidating countries to not file cases against them, and I think from the United States Government's standpoint, it is probably just a healthy part of the WTO trading relationship to have China susceptible to enforcement of the rules like all of us are, and I think there are a lot of areas, particularly counterfeiting would be one and intellectual property protection, where the United States and Canada could cooperate more to achieve better behavior on the part of the Chinese.

But you are right, the competition from China is worrying every trading partner; it is sort of the big elephant in the room in the WTO negotiations because, as we look to reduce tariffs through a tariff cutting formula or through a duty-free sector agreement, all countries say, as well, that that just opens our market to China, and they will eat our lunch. So it is something that all countries are grappling with and the WTO is grappling with.

MR. POTTER: I agree with all that.

I think we should put a different slant on it, though. Maybe it is not just a threat that we are seeing from China. I think we should be a lot happier to have a billion people there with their standards of living increasing than a billion living in abject poverty. That's an opportunity rather than a threat, and the opportunity of China having a healthy economy is a major opportunity for a country like Canada.

MR. CAMERON: It is also worth noting the Chinese until now have not, it is fair to say, have not aggressively used trade litigation in terms of WTO, in terms of pursuing their complaints with the United States.

As China becomes the subject of these cases – and I agree with Meredith that inevitably will occur – China does have a lot to account for in terms of some of the rules that they have and the way that they administer them.

But it is a two-way street, and not to raise the sensitive issue of softwood lumber, but I would suggest to you that these two-way streets don't always fit when other countries are taking the United States to the WTO because, number one, the United States rarely settles WTO disputes prior to actually going to panels as opposed to the example of China so far.

Number two, there is always the issue of implementation.

MR. CAMERON: David?

MR. GREENSPAN: Mr. Potter, you mentioned in your speech the ongoing Microsoft soap opera in Europe and in the United States as well, and I believe, Ms. Broadbent, you also mentioned the increasing transfer of media sources into electronic media sources.

And one of the emerging trends we have seen in recent years is open source. And in that sense, you have consumers who are doing some innovating, but the majority of the innovation is still coming from larger companies and corporations.

And I wondered how this is changing the dynamic of – this idea of global IP enforcement patent rights, how is it complicating the issue?

MR. POTTER: I am not so sure it is true that the innovation is coming more and more from the larger and larger but let's take the question anyway. The fact that there are such large companies and how does that change this dynamic, I hadn't really stopped to ask whether it changed the dynamic, depending on whether you are big or small.

The fact is, both America and Canada want to have an environment where there can be innovation from big or small and want to have an environment where those innovations are protected for a legitimate period.

So my first reaction is maybe it doesn't change it.

MS. BROADBENT: I don't have anything further.

MR. CAMERON: Chris.

MR. CARMODY: We have heard a lot over the past few months about growing concern here in the United States with respect to industrial adjustment, particularly the specter of large companies like General Motors having to lay off large numbers of employees, large-funded pension liabilities, and an increasingly gloomy outlook that in some sense is coloring the debate over the DOHA round.

My question to Meredith is: Is there anything that the Trade Representative's office is doing to try to, one, perhaps protect some of these workers in terms of the adjustment programs that have to go on, and, two, perhaps to address some of the distributional concerns that come out of these trade arrangements because I think there is a growing sense that while some people have benefited greatly from the Euroway round, some people in some coun-

tries, it seems that certainly, if you look at the statistics, perhaps the average person in the street has not benefited that much.

And one, of course, has to take these statistics with a bit of a grain of salt because we live in a world today that is very different than the world of ten years ago, and Euroway round is completed. Now we have 12 brands of shampoo versus maybe three in the past. Those sorts of subtle qualitative measures can't be measured by sheer statistics.

But I am wondering if there is anything that the Trade Representative's office is thinking about in terms of sort of improving the flow-thru, if you will, to the average person?

MS. BROADBENT: I appreciate that question. There is a trade adjustment assistance program, which is not administered by the Special Trade Representative's Office but the Department of Labor, and there are benefits there related to retraining and worker assistance and healthcare benefits for workers that can certify that they have lost their job as a result of that export competition situation.

I mean, I think that Ohio sort of sits at the cross hairs of what's in the real pain and suffering of what's going on in this sort of fast moving economy that keeps moving. I think probably productivity gains in Ohio are a bit less than in the rest of the economy, and nationally, there is more heavy industry here, probably unfortunately less high tech, but at the same time, Ohio is the biggest exporter of all states.

And one in five manufacturing jobs in Ohio are related to exports, so Ohio has a big interest in making sure that markets stay open and we do not turn inward and try to somehow raise tariffs and stay away from the competition because long-term that does not give us a real path to success.

So I think we need to think more about the education side. Both the Democrats and Republicans are working more closely to high tech training and higher education in trying to beef up what we can offer workers in that situation.

And then, as I said, there is the trade adjustment assistance, but, you know, the overall – none of – the overall numbers really mask in a lot of areas where dislocation is happening, and it is really incumbent in Ohio to sort of explain that in Washington and to what's going on and to tell us how these programs are working and how they can improved.

MR. CAMERON: Simon?

Well, first, I mean, it is useful to note that there is a theory with respect to our negotiating posture. Our negotiating posture is based upon the assumption that, number one, we are the richest country in the world.

Number two, we do have all the toys.

And, number three, in order to promote increased wealth we need to keep expanding markets because you cannot ask other people to open up their market. She is hammering on every negotiating partner that she negotiates

with to open up all of their market. You cannot do that and at the same time say, "Oh, by the way, you can't export anything to us because, of course, we have transitional problems."

The fact of the matter is that the United States has been the most successful economy in the world because we are the most adaptable to the dynamic, and it gets back to the 15 million jobs that are destroyed and the 17 million that are created.

It gets exactly to the point of this seminar today, which is innovation. It is the fact that the United States, in fact, is in sync with that concept that allows for this.

Now, there are very serious dislocational problems, and many of those are not created by trade negotiations. Many of them are created by healthcare policies. Many of them are created by legacy costs in which the cost of an automobile has a substantial healthcare component that is built in it, which, of course, is not the same as the healthcare component that may be built in it in Korea or in Japan or China or in Europe.

And this is not new to the automobile industry. If you want to know how they restructured the steel industry, I can tell you. They restructured the steel industry by using bankruptcy policies, and they screwed the workers. And that's the policy this Administration followed in order to restructure the steel industry.

And they used trade barriers as a cover to do that. But the restructuring was through bankruptcy.

MR. TSAI: Something I haven't heard talked about at this conference this weekend yet is Schumpater's idea of a hundred years ago that competition actually stifles innovation. The idea is that one of the things about innovation that arises that I guess moderate discourse says that people will design around other companies if they are in competition with one another.

I was wondering what the panel thought about this in light of the Boeing Airbus debacle, the semiconductor debate of the '90s, and whether Government subsidies in terms – just the relation with WTO.

I guess it is a broad question, but I wonder if you guys could comment on that.

Thanks.

MR. POTTER: No. I didn't talk about that because it seems to me that competition is a tool of innovation. Sure, we always have copy cats. After the first automobile, everyone wanted to build one.

After the first television, everyone wanted to build one, but competition has produced better and better televisions and competition has produced cars, which nearly never break down any more. I think competition has done that.

I think it would be a great shame, after the years and years of debate when we wondered whether competition of free societies were actually going to

deliver something to their citizens, and we found out what the truth of that was.

I think competition is good. The question for this panel I think has been how is it that you marry competition and innovation and the protection of intellectual property? Does one get in the way of the other?

But I certainly did not think it was appropriate to reexamine the question whether competition is good for innovation.

MS. BROADBENT: I would agree.

MR. KASOFF: I have read Schumpater's intent because he used the term "creative destruction," and he said that under capitalism, there was competition, and it was merciless, and it may be painful to certain people in the short run, but over time, creative destruction leads to new higher levels of technology and innovation and so on.

So I think Schumpater is consistent with your last comment.

MR. CAMERON: I think that is it, Henry. I would like to thank both Meredith and Simon, and thank you for your time.

(Session concluded.)



