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## DISCUSSION AFTER THE SPEECHES OF JOHN H. KNOX, GREG BLOCK, AND ANDRE BEAULIEU

QUESTION, MR. GROETZINGER: There have been a number of trends over the years in the environmental area. In the late 1960s when the National Environmental Policy Act (NEPA) was first introduced in the United States, it was a command and control environment. The federal government in Washington, which was very centralized, decided what the standards were going to be based on scientific data without any relevance to a particular locale. The government would then figure out whether you were violating it, and you would be sanctioned. Nowadays, the process seems to have become more decentralized. A lot of the decision-making has been pushed down to the state and provincial levels where, presumably, they will need to come up with a budget. I wondered how, in a decentralized environment, particularly where you have disparities between one province and another in terms of resources and money, how does that affect a centralized type of commission arrangement and how would you work with the decentralized groups?

ANSWER, MR. BLOCK: Some of the other panelists might have a response to that, but that is an excellent question. It came up at a discussion on North American environmental law that we had in Austin, Texas at the end of last year. And one of the real concerns that people have is the Article 3 commitment by the parties to maintain high levels of environmental protection, excepting the fact that they can establish whatever environmental laws they want to establish. That is a party obligation.

What tools do we have to measure that? One of the things recognized in Austin was that, as decentralization accelerates, the tools are weaker because you have a proliferation of different local, sometimes municipal, sometimes state or provincial levels or even regional levels applying or implementing the law, but not always with the same mechanisms, not always with the same degree of transparency, not always with the provisions requiring accountability. Those are the kinds of things people look at. We are hearing a lot about that. The ministers have asked us to prepare some principles on the evaluation of whether the laws provide for high levels of protection, and one of those is certainly going to address that issue. But it is a big challenge.

One final point here. We are looking at command and control alternatives, and we will have the publication finalized in about a month, looking at voluntary compliance initiatives in each of the three countries. I think that some very interesting work is going on in that area. There are also some very serious concerns.

But one quick, rather enlightening response we have gotten is that a lot of the industries were very enthusiastic about the widespread use of economic instruments in lieu of this odious command and control model. Once they see that these result in cost internalization or taxes or some other way of reflecting the true value of external life environmental impacts, people tend to lose their enthusiasm. There is no easy trade-off.

COMMENT, PROFESSOR KING: Greg Block is building quite an institution there in a very important area. And, I suspect that the most is happening that could happen under the dynamic leadership of the environmental commission. So I want to congratulate him and his colleagues for what they are doing. I think it is in the public interest. Building an institutional framework is very important and very unique.

QUESTION, MR. NADAL: My question is about the definition of the environment in the side agreement. As I recall, the definition of "environment" in the side agreement leaves out all natural resources management questions. Essentially it says something like, "exploitation of natural resources for commercial purposes."

COMMENT, MR. BEAULIEU: That is correct.

QUESTION, MR. NADAL: Is that correct?

ANSWER, MR. BEAULIEU: That is correct.

QUESTION, MR. NADAL: Okay. It probably makes sense to leave that out of the trade agreement because it opens a tremendous amount of very delicate issues. But on the other hand, if you look at the tuna environment, for example, in Mexico — I just finished a book on Mexican fisheries — the only important commercial fishery in Mexico that is not overexploited is tuna. The reason for that is the embargo. If you lift the embargo, I believe that it is very reasonable to expect that in three years, at most, the tuna fishery will be as overexploited as the other fisheries have been, and this is directly related to the opening of trade opportunities. But, again, if you bring natural resources into the side agreement or into the environmental provisions of the trade agreement, I suspect that the complications are going to be enormous. What is your feeling about this?

ANSWER, MR. KNOX: I think it is important to make a clarification. You were talking about the environment, but, in fact, the definition you are referring to is for environmental law. The difference is signifi-

cant because the definition does not exclude from the agreement's coverage laws that are directed at the protection of natural resources. That is included. What are actually included are environmental laws whose primary purpose is the management of the commercial harvest or the exploitation of natural resources. Mining laws, for example, or, rather, agricultural laws are not, per se, included. And the reason they are excluded is because the key provision in the agreement is for the effective enforcement of environmental law. So people just did not want to get into questions of laws that might very well affect the environment, like mining laws, for example, and whose primary purpose was not to protect the environment and natural resources.

ANSWER, MR. BEAULIEU: That being said, it is important to know that the definition of environmental law includes any provision of another law that deals directly with the environment. For example, in that mining law, if there is a series of provisions that deal specifically with waste, they are covered by the agreement, and you have to apply those just the way you are applying the others. But I think that the scope of the agreement is already very broad. To include natural resources management, in general, would have killed it.

And, finally, we are talking about effectively enforcing your environmental laws in the context of either a public submission to the Commission or this dispute settlement process, but the rest of the cooperative agenda of the Commission includes a number of programs and studies and efforts that are aiming at better conservation and better management of natural resources. So that whole cooperative agenda, no pun intended, it is not contaminated by the exception, which is designed, I think, for other specific applications.

QUESTION, MS. DALLMEYER: Another quick question; other than putting environmental lawyers and trade lawyers in a locked room and trying to see who is left at the end of the day, who else are you including in your discussions regarding the harmonization of environment and trade?

ANSWER, MR. BLOCK: One of the biggest challenges when you have, as everybody does, a fairly constrained budget is who do you include in your outreach and how do you do it, especially when your geographical scope is continental, not local?

What we have tried to do is be project-specific. We will be able to identify with some limited degree of success, and this will improve, who the interested parties are with respect to each project. The project manager will maintain a pretty expansive list of names and associations and will try to get as many people involved as possible. That is imperfect, but it is the best we can do right now. The other way, which is a bit

broader, is to have public meetings where, if we give ample notice, presumably, people who have interest in opining will show up.