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Steel: Unions, Industry, Governments, and Tribunals

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Thank you very much. It is a pleasure to be here. I want to thank Dr. King for inviting me, and Troy, for the kind introduction. It is a pleasure to be on the panel with Charlie. Although, after hearing him speak, coming from the steel industry, I am not so sure that that pleasure is as great as it should be.

Today I will discuss the Canadian and U.S. safeguards from the perspective of the cooperation between Canada and the U.S. and the integrated Canadian-U.S. steel markets. As one reviews the process of the Canadian and U.S. safeguards, one can see the strong cooperative interaction amongst a number of players. I think it is the reason that yielded the results that came out of the U.S. safeguard, at least as it affected Canada, and, of course, the result of the Canadian safeguard, which ended up with the Government imposing no remedies whatsoever.

First a little background, the Canadian Steel Producers Association (hereafter, “CSPA”) represents all of the primary steel producers in Canada. It is the equivalent of the American Iron & Steel Institute, the Steel Manufacturers Association, the Specialty Steel Institute of North America, etc.

Turning to the Canadian steel safeguard, I will examine the Canadian industries. In addition, I would like to examine how the Canadian steel industry played the various instruments throughout the safeguard hearings, the injury hearings, the remedy hearings, and then the government decision after

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the CITT recommendations. Next, I will examine the same issues in respect
to the U.S. safeguard and the Canadian objectives and strategy.

Many forget that these initiatives have yielded positive outcomes. In ad-
dition to the opportunity that it afforded the U.S. steel industry to consoli-
date, it addressed the flood of offshore imports and led to the OECD initia-
tive to discipline steel subsidies by government through a steel subsidy
agreement.

It must be remembered that the driving force behind both the U.S. action,
the Canadian action, and other state's safeguard actions, was the problem of
world steel overcapacity created by continued government subsidies to in-
crease steel capacity worldwide, and to preserve uneconomic steel capacity.
Those were the driving forces affecting the market, forces that are still at
play.

I will also present some lessons, particularly as they relate to the Cana-
dian-U.S. relationship on steel.

To begin, it is important to establish the context for the Canadian steel
safeguard. The industry petitioned the government in February of 2002 to
initiate the safeguard.¹ The government initiated the safeguard on March 21,
2002.² The Government made its decision on remedies in October 2003. The
Canadian International Trade Tribunal (hereafter, "CITT") found serious
injury in five of the nine products on July 4, 2002.³ The CITT rendered its
remedy recommendations in August 2002.⁴ In its remedy recommendations,
the CITT recommended that remedies be introduced against U.S. imports for
four of the five products on which it found injury. It also proposed tariff rate
quotas as the remedy for these four products. It did this it appears because of
the NAFTA requirement on safeguard remedies which states that imports can
only be limited to a representative period plus growth.

The CITT provided its recommendations to the government in August
2002 as I have said. The Government did not respond to the CITT recom-
mandations until October of 2003, over a year later.⁵

¹ Anti-Dumping in Canada & the US, available at:
⁴ Canadian International Trade Tribunal Safeguard Inquiry into the Importation of Cer-
⁵ Steven Chase & Greg Keenan, Steel Makers Vow to Take Actions, THE GLOBE AND
Why did it take so long?

The essential reason was that the Government was caught in a dilemma. On the one hand, it realized that the industry needed remedies. On the other hand, it was faced with the desire shared by both the industry and the Government to not introduce any remedies on U.S. imports as was recommended by the CITT. The CSPA strategy in light of this dilemma was to develop the argument on how this dilemma could be resolved. But before I get to that let me say a few words about the CSPA’s overall strategy.

The foundation of the CSPA’s strategy was analysis, analysis and more analysis. Essentially, every test of the WTO safeguard agreement was examined and analyzed before we petitioned the Government to act.

Was there a sudden, recent, unforeseen increase in imports?

The answer to that was yes, the CSPA found increases in nine products. Was there serious injury? The answer to that was yes. It could be demonstrated. Were imports the principal cause of the serious injury? A cause no less important than any other cause, of course.

In the CITT report, the CITT did agree with us on virtually all the products; that there was a sudden, recent, unforeseen increase in imports; and that, indeed, the industry had been seriously injured. Then there is some difference in the four products where the CITT did not recommend remedies as to whether imports were a principal cause or not. This is where the CSPA’s views divert from those of the CITT.

The CSPA chose to focus on the CITT hearings, and then focus on the government. We attempted to keep the debate focused on the CITT and government, the decision makers, and not have the debate in the media. Another aspect of the CSPA strategy was to engage Provinces, the Union, customers, suppliers and other associations. Our objectives were to have the government Initiate the safeguard, to have the CITT find serious injury and

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8 Id.
recommend appropriate remedies which in our view was tariffs and to ensure that no remedies would be introduced on U.S. imports.\textsuperscript{11}

In many respects, we were very successful. The Canadian government initiated the safeguard. It embraced the CSPA’s analysis on the WTO tests.\textsuperscript{12} Imports had increased by 76 percent between 1996 and 2002 in absolute terms.\textsuperscript{13} In relative terms, imports were now taking up 40 percent of the Canadian market compared to 27.9 percent in 1996.\textsuperscript{14}

An examination of the serious injury key indicators, profits and margins, capacity utilization, employment, inventories, all the tests, revealed clearly that the industry had suffered serious injury. Armed with this information, representatives from the CSPA met with the key Ministers and government officials.\textsuperscript{15} The Canadian government’s analysis was in line with the CSPA’s conclusions, and they initiated the safeguard. The point I want to make here is that the interaction the CSPA had with the Canadian government was analytically driven. It was not driven by politics at all. It was straight analysis.

At the CITT injury hearings, we used the CITT staff reports because they supported our analysis. If you read them, they are excellent documents on the state of the Canadian steel industry. And we used that, because they did support our analysis. We addressed wherever possible major concerns. We had major concerns with import prices and import volume variability. This really went to the U.S. situation. U.S. imports come into Canada at much higher prices than offshore imports\textsuperscript{16}, and they come in at more stable volumes. And that is exactly what one would expect in an integrated market. Their prices are in line with Canadian domestic prices.\textsuperscript{17} Therefore, while their volumes are large, as again one might expect given the balance of steel trade between Canada and the U.S., it was the U.S. volume and the failure of the CITT to examine import prices in detail that resulted in the U.S. being included in remedies.

We felt the CITT, Canadian International Trade Tribunal, did not do a good job of going the next step and looking in detail at the pricing and stability in import volumes, or variability in volumes from various sources. When we did the analysis, we found it possible to track virtually every turning point

\begin{footnotes}
\item[11] Id.
\item[12] Id.
\item[14] Id.
\item[17] Peter Brieger, Steel Alliance Goes Against the Grain, NATIONAL POST, May 20, 2003, at FP1.
\end{footnotes}
in Canadian domestic prices through price movements in off offshore imports. Both Canadian prices and the prices of U.S. imports responded to those price declines or price movements.

I might also note that no politicians were involved in the CITT process. I think there were about 80 politicians involved in the ITC hearings. We had none. It was straight, analytic, and factual.

While we may not have liked the injury outcome on at least on four of the products, and certainly on remedies, the CITT process was a good one in many respects. The CITT completed the process in 120 days from beginning to end.

So what was the result?

They found serious injury on five of the nine products. They concluded for some of the products where there they found no injury that remedies already in place were sufficient and that nothing more needed to be done. Moreover, they looked at some of the market developments and attributed for some of those products injury to market developments rather than to imports.

As I have said the CITT recommended tariff rate quotas for the four products where it was also recommending remedies against U.S. imports. The reason it did that is that under NAFTA, if you are going to impose a remedy, that remedy can only be based on the flow of imports in a representative period, recent representative period, plus growth. The only way you could assure that, according to the CITT, was by tariff rate quotas. The tariff rate quota establishes a limit on the volume of imports after which tariffs would have to be paid. Of course we opposed this recommendation on two grounds—first, we did not support remedies against U.S. imports and secondly tariff rate quotas are not as effective and more complex to administer than tariffs. The one exception to tariff rate quotas was concrete reinforcing bar where the CITT had concluded that U.S. imports had not contributed to serious injury. In this case, we argued that recommended tariff level was too low.

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20 Id.
21 Id.
22 Id.
23 Bush May Exempt Mexico, Canada on Steel, WALL ST. J., June 27, 2001 at A4.
Our course was clear – to convince the government that the U.S. should be excluded from remedies and that the appropriate remedy was tariffs against offshore imports. Our challenge was to develop the argument for this outcome. First, we had to develop the argument that the Government could exclude the U.S. while still introducing tariffs against offshore imports. Second, we had to develop the arguments for an appropriate level of tariffs. We worked on this from the time of the CITT's remedy recommendations (August 2002) until the Government decision (October 2003).

Why did it take the government so long to make its decision?

As I have said, the government had a serious dilemma on its hands. The government recognized that the industry was seriously injured and that remedies were needed. However, the government also saw that the CITT had recommended that remedies be imposed on the U.S. Neither the government nor us, the industry, wanted remedies introduced against the U.S. What was the way out of this dilemma? Well, the government could not take any action, or it could not accept the CITT remedy recommendations and introduce remedies, preferably tariffs offshore imports. These were the only choices.

What we did was try to construct the arguments as to why the government could impose remedies on offshore imports, i.e., exclude the U.S. The analyses that we had done, the gist of our points, were three.

The first argument was that U.S. imports had not contributed to serious injury. We spent a lot of time examining import prices, both U.S. and offshore. We did it by product, we did it in detail, and we tracked the flow of imports, and how they impacted the domestic market. Therefore, we felt we developed a compelling empirical argument that U.S. imports had not contributed to injury.

The second argument we raised was that the CITT, in its report, and this is frequently forgotten, also concluded that offshore imports by themselves had contributed to serious injury. This we argued would meet the test of having reviewed whether offshore imports themselves had caused serious injury. In many ways, there is a similarity with what the U.S. Administration had asked the ITC to do in the U.S. safeguard. The Canadian International Trade Tribunal had already reviewed this issue in its initial findings.

The third argument was that the decision lay with the Minister, and the Minister is perfectly within his rights to take into account any information

that he or she might think will be helpful in making a decision. Thereafter, we presented the information and analysis supporting the view that U.S. imports had not contributed to serious injury, that offshore imports by themselves had caused serious injury, and that tariffs were the most effective and administratively efficient remedy.

During this period, we spent a lot of time with Members of Parliament (hereafter, "MP's") sharing our analysis and options with them. We engaged the Provinces. The Minister created an MP Review Group to examine options and to make recommendations. This group met with government officials, met with ourselves, and met with others. That MP Review Group concluded that our arguments were sound, and that the government should move to introduce remedies against offshore imports. There was very little public comment, and when it did come, it was late in the day generally off point.

In any event, the service centers, or the MSCI, Metal Service Center Institute, supported our position, as did the Auto Parts Manufacturers Association. They both came in and supported our position.

Nevertheless, the Government still faced the dilemma—do nothing and fail to support the industry or take action as we had been proposing and face a WTO challenge perhaps. There was an analytic debate that went on for months, and it was a lot of hard work done by a lot of people.

During 2003, it was becoming clear that the U.S. was unlikely to succeed in the WTO challenge of its safeguard decision. If one takes a positive perspective, the Government saw this development, and said, "No, we are not going to proceed by imposing or implementing remedies in Canada given that we would not be successful in a WTO challenge." The other opinion one could take is that the government just wanted to see this dispute stalemated and let it run its course. I happen to think that it was the former; that once it became clear that the U.S. safeguard was going to be successfully challenged at the WTO, the government decided to allow the issue to run its course.

Let me now turn to the U.S. safeguard. We focused on three key messages. First, Canadian exports to the U.S. had not contributed to serious injury. Let me say Canadian exports are less than 4 percent of the U.S. market, and that share has declined over the past decade. Canadian imports were only 7 percent higher than in 1996.

In terms of integrated market, Canada and U.S. steel trade is in balance. It is a great success story. The trade between the two countries is balanced.

It is about 3.6 billion dollars, 3.7 billion dollars.\textsuperscript{28} U.S. exports to Canada almost 60 percent of its total steel exports,\textsuperscript{29} up from 33 percent less than a decade ago.\textsuperscript{30} The value of U.S. exports to Canada increased from 500 million to 3.6 billion annually over the last decade.

Transborder investments are increasing. Steel companies operate on both sides of the border, common customers, and similar administrative and legal frameworks. We face common challenges including market distortions flowing from world steel overcapacity created through government subsidies. Both countries face a growth in import penetration, although it has been far more profound in Canada. Industry is growing in the market, and imports are reaping the benefits.

You may not know this, but the demand for steel in Canada has been growing about 8 percent a year.\textsuperscript{31} The Canadian steel industry has had about a 14 percent annual average increase in productivity.\textsuperscript{32}

To address the U.S safeguard we developed the argument for exclusion, and created a broad-based Canadian coalition involving service centers, fabricators and the union, and we worked closely with the Canadian government, the U.S. industry and with Parliamentarians and Congressional representatives to carry the arguments for a Canadian exclusion. The Chairs of Canadian and U.S. Steel Caucus and the Steel Caucuses themselves were engaged.

During the U.S. hearings, Tony Valeri, who was the Canadian Chair of the Steel Caucus, and Phil English, who was Chair of the Congressional Steel Caucus, appeared back to back both saying Canada should be excluded.\textsuperscript{33} We have the same union on both sides of the border. Leo Gerard, USWA International President and Laurence McBrearty, Canadian Director of the USWA, both advocated excluding Canada.\textsuperscript{34} Customers endorsed the argument. The transborder steel market is really integrated. I think everyone was very worried if the U.S. imposed remedies on Canada, or if Canada had imposed remedies on the U.S., that that integrated market would be significantly harmed, and it would not work to the benefit of either side.

\textsuperscript{29} \textit{Id.}
\textsuperscript{30} \textit{Id.}
\textsuperscript{32} \textit{Id.}
The Prime Minister talked to the President about this, the Minister of International Trade in Canada talked to his colleagues, U.S. Trade Representative Zoellick, the Commerce Secretary, etc. There was great support for Canadian exclusion, but that support worked both ways, because there was also great support for U.S. exclusion in Canada.

The earlier panel talked about a number of forms other than just governmental ones. These were particularly important for steel and for the approach to both the Canadian and U.S. safeguards. Obviously, in the case of steel, while each government did not want to take action against their largest trading partner, the interventions of industry, the union, and customers reinforced governments.

I would also like to address the OECD initiative. This is a very important initiative from our point of view. The purpose of it is to put in place an international agreement that will discipline or limit steel subsidies.\footnote{Conclusions of the High Level Meeting on Steel, September 17-18, 2001, available at: http://www.oecd.org/document/58/0,2340,en_2649_34221_1906426_1_1_1_1,00.html (last visited Sept. 19, 2004).}

There are 40 countries at the OECD working on this.\footnote{Martin Crutsinger, International Steel Talks Suspended, GLOBE AND MAIL, June 30, 2004, at B8.} Progress is being made, yet there are still some hurdles that need to be addressed. There is going to be a major meeting sometime in June.\footnote{Communiqué Issued Following the High-Level Meeting on Steel, 28-29 June 2004, available at: http://www.oecd.org/document/5/0,2340,en_2649_34487_32362885_1_1_1_1,00.html (last visited Sept. 19, 2004).} From our point of view, an effective agreement is absolutely essential because it removes one of the major structural imbalances in steel.

Another forum that is worth mentioning is the North American Steel Trade Committee.\footnote{Joint Statement of NAFTA Governments on the Establishment of the North American Steel Trade Committee, available at: http://www.ustr.gov/assets/Trade_Agreements/Regional/NAFTA/asset_upload_file57_3599.pdf (last visited Sept. 19, 2004).} This is where governments recognize the high degree of integration in North American steel Markets. That committee is a forum where industry and governments get together and discuss challenges, what is happening in the markets, how to best ensure distortion free steel markets, what can be done, and how to coordinate trade matters. It is a really interesting institutional framework development in terms of NAFTA.
I have a few conclusions

Steel provides an excellent example of strong Canadian-U.S. relations. That relationship has been built over time by the steel industry, the union, governments, and politicians. It reflects the fact that the industry on both sides of the border serves common customers, have common suppliers, belong to the same associations, and recognize the importance of not impairing Canada-U.S. steel trade.

Second, we need to work together. We face common challenges and have similar opportunities. We share a common objective of ensuring distortion free NAFTA steel markets and in having strong NAFTA wide positions on international trade matters. NAFTA, governments, and industry need to continue to foster the market. That is why the North American Steel Trade Committee was created.

A third conclusion is the safeguard mechanism is volume-based. A volume-based instrument works against the interests of the two integrated markets trying to address import issues, because the safeguard is largely volume driven. Therefore, it works against a volume-based instrument. This is especially important from our point of view given the high and growing volume of steel trade between Canada and the U.S.

Finally, the Canadian International Trade Tribunal managed the safeguard hearings well. Staff Reports were very good. The submissions were for the most part analytical, and not just ours. This was somewhat attributable to the quality of the staff reports. Submissions had balance and were complete.

There are some lessons that we would hope that they would apply in future cases, not just safeguard cases, generally: strict time lines in schedule; greater reliance on paper, equal time limits for witness cross examination. We did have concerns, as I have said, about their sample of questionnaire respondents, import prices and the analysis of import prices. I should add that concerns over import prices were shared by the CITT.

Witnesses were given equal consideration, which is very important. Witnesses substantiated submissions, so that they can be cross-examined. All too often in Canada we have submissions, no witnesses, no cross-examination.

Thank you very much.