Discussion following the Remarks of Mr. Blum and Mr. Lacombe

Discussion

Follow this and additional works at: https://scholarlycommons.law.case.edu/cuslj

Part of the Transnational Law Commons

Recommended Citation
Discussion, Discussion following the Remarks of Mr. Blum and Mr. Lacombe, 30 Can.-U.S. L.J. 231 (2004)
Available at: https://scholarlycommons.law.case.edu/cuslj/vol30/iss/38

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
MS. CRIBB: Dr. King, you have the first question.

PROFESSOR KING: Yeah, I had a question. I want to address it to Mr. Blum. I think it is a 2-prong question.

One, you spoke of another alternative remedy than what was given in this particular case, but is there any possibility that our relationship with Canada, which is based on analysis and fact and paper; could we replicate that at all with, say, the European Union in any sense? Is that a possibility, or are there too many interests there?

So two prongs: one, what is your remedy? If not, what has been happening? Two, can the U.S. experience be replicated with the European Union?

MR. BLUM: Okay. I will answer them in the order you asked. Alternative remedies, actually, the Service Centers delivered to the U.S. governments their third remedy option about a week before the decision was taken by the President, and we managed to have it delivered by two companies, one of which was Tisson, the German company that has very big U.S. operations; 31,000 U.S. employees in different areas. And that was supposed to signal to the White House that Europeans would go along with what was being proposed. And, actually, they never even asked the question. So I do not know if they got the message.

The basic idea there was - it was a little bit - you know, it was all premised on imports were trending down, they were continuing to trend down, so we were not up against an emergency import situation. So what we suggested to them was the President should proclaim relief, but suspend it, not immediately implement it. But he ought to sort of reserve his rights, and then enter into negotiations with trading partners.

And with the idea that ultimately there would be a tariff rate quota. And your share of the tariff rate quota, your duty free quota, would be affected by two things. One is your willingness to eliminate subsidies, which Barry will be happy to hear about; and, No. 2, the openness of your market.

I know that 6 months later, this was still on the Vice President's desk, because he spoke to somebody who visited him about this paper, but they never discussed it with us. I mean, there was never any serious decision. They wanted to just get out of this, so they said 40 percent tariff, and it was done carelessly. I think there were much better ways.

That is just one. You could have done it with a quota, too, but no one likes quotas. A tariff rate quota is a little bit more elegant because it is free on the upside. You can continue to ship if it is needed. So I really think that
is by far a better remedy than what was done. And it could have been used artfully to promote some of the changes in the world system that is needed.

If what you mean is could the U.S. and the Europeans integrate economies to the same extent, I think there are some people who would like to see that done. I think I have heard some of the former USTR’s - Mickey Canter, I know, says this repeatedly. I expect to be fully retired before that could happen.

The economies are simply too big, and there are too many difficult issues. I mean, agriculture would be just impossible for us. We cannot even manage it in the WTO context after 50 years, how could we do it bilaterally? So I really think that is a remote possibility.

MS. CRIBB: And I think it has made harder now by the eastern European countries being brought into the EU.

PROFESSOR KING: Marty.

MR. GELFAND: Hi, I am Marty Gelfand, Senior Counsel for Congressman Dennis Kucinich here in Cleveland. And I was involved in this period that you are talking about, because I was litigating the bankruptcy, the LTV bankruptcy case, in the Bankruptcy Court in Youngstown at that time. And we had a steel summit here in December of 2000, a few days before LTV filed.

We had Bill Bricker, a CEO of LTV, telling us flat out, to the Congressmen, to the Mayor, the other elected officials, the unions, even the secondary steel folks, we cannot make steel with the dumping. And I heard it referred to as injurious import surges, but basically what it was dumping. It was hurting this company here in Cleveland. It was hurting other companies, other companies are in bankruptcy. We were in crisis here in Cleveland. We had thousands of jobs at stake. All of that land that you see Downtown where the steel is being made today was about - was going to be shut down in 2001 had we not done something to take care of - you’re right, the legacy costs and the restructuring were important issues, but the dumping had to be dealt with.

And the reason that we were able to get Wilbur Ross here in Cleveland to look at the property and to bring in Rodney Mott to be CEO of the new ISG Company, and the reason that this was able to happen was the prospective tariffs that were being proposed.

And the fact is that the tariffs were in effect, ISG was able to make a go of it. And they are exporting steel now. They are doing very well. They just acquired Weirton. And, you know, nothing succeeds like success here.

Now, you know, you may have some complaints about tariffs, but we had complaints about subsidies. It was killing our industry here. And because we had that period of time where we had the tariffs, we were able to keep jobs here in Cleveland. We were able to grow a major steel company, and we have to look at that.
MS. CRIBB: Yeah. As I said in my opening remarks, and I think, you know, there will be a debate going on for some time about, you know, would the restructuring have happened but for the import relief. But as kind of a - to respond to part of your comment, actually, a Section 201 safeguard is completely separate from a dumping action.

And in a dumping case, producers from certain countries are alleged to be selling in the U.S. market at below what we call normal value, which is usually the prices they are selling in their home market with, you know, the obvious adjustments made. And, you know, in the past few years there have been many dumping cases filed on steel products.

The difference with the 201 action is that it is a relief action against all imports. As Charlie mentioned at the end of the day, some countries are exempted. Our NAFTA partners were exempted, our other free trade partners were exempted, the developing countries.

But it is a remedy. It is based, first of all, on a surge, a volume surge. Ultimately, the ITC does look at what happens with prices in determining whether there’s injury, but its volume based. And then the remedy goes on all imports regardless of their price.

And so the remedy was imposed on, you know, goods coming in that were priced higher than U.S. products in some cases. And that is why the rules of the World Trade Organization require a higher injury standard for a 201 action than they do with dumping case or a countervailing duty case.

MR. BLUM: I would say, I mean, the factual situation that we had at the time of the 201, I do not recall the number offhand, but there were well over 100 anti-dumping and countervailing duty remedies in force on the products on which the 201 measures were imposed. It was not like, you know, there had not been remedies.

And, by definition, once you have applied those remedies, the trade is fair. Despite that, the domestic industries always refer to the illegal imports. They do not like the idea is that, you know, if trade still continues after a dumping order, that there is something wrong with the law. That is fair competition. And that is the theory, and that is the practice. And that is when you invoke the 201, which is exactly what happened here.

Now, if you would read my statement, I did not say all of this, but if you read my statement, I tried to be very clear today, and in front of the ITC. We made an argument - I think we made the argument better than the domestic industry made the argument that the 201 measures had served this purpose.

And we said very kind things about Wilbur Ross. We said very kind things about the International Steel Group. We said very kind things - in fact, we were the first people, I think ever, long before the domestic industry testified about the need for and the value of consolidation of the American industry. We testified to that, because that is what worked in Europe.
Europeans had problems very similar to the Americans in the 1990's. And what happened to Europe was, around 1993, when the cost of sustaining the mills became absolutely unbearable, and the difference between the subsidized and the unsubsidized producers created a huge political gulf within the EU, they, effective in 1993, prohibited flatly all subsidies. And if anybody gives an illegal subsidy in Europe, you can go to court and get the court to order its repayment, okay. And that is done. That is a good model for the OECD. We have one specific issue that divides us, but the EU today, it is only in the EU, where by law these subsidies are illegal, and you can actually get a remedy. And they are about, next month, to expand this to 10 more new members, so there will be 25 countries under these rules. I would argue the U.S. could benefit from this, too.

But there is nothing - we were proponents of exactly the process that Mr. Ross led. The only issue here was how to create stability in imports. And as I tried to answer the first question, there were better ways to do it that would have allowed this process to go forward without all of the turmoil, without all of this crazy exclusion process, without all of the legal fees. We could have had exactly the kind of stability that the industry required to raise the money and do these changes. And we were the biggest proponents of that.

MS. CRIBB: I think Barry has a comment, too, on this.

MR. LACOMBE: Yeah. The only comment I would like to make, really, is I think you put your finger on it. I mean, the subsidy problem is a significant problem. I tend to be at least an agnostic on Charlie talking about the EU not subsidizing its industry. You know, I think there is fair evidence to the contrary of that.

Now, it may do it through general subsidies, so it is hard to challenge them, but, basically, generally applicable subsidies. But you take a look at their environmental subsidies, and they are pretty substantial. I wish we had similar kinds of things in North America.

So, you know, the subsidy issue is a big issue. And it really does distort, really does distort world steel trade. And it is awfully unfair. I mean, you know, we believe in market. We want the market to work. But it is hard to let the market work if people on the other end of it do not really have markets working. And that is kind of the dilemma facing steel worldwide. That is why the OECD initiative is so important.

The other part, the consolidation part, which is fine. But I think unless the U.S. had taken this action, we would not be having the OECD exercise looking at steel subsidies.

MR. SILVIA: I am Tom Silvia from Ann Arbor, Michigan. The first panel we had, I talked about regionalism. And one of the things that seemed to make this work was the input of suppliers on both sides of the border; that
in many respects what we are talking about is steel in the Great Lakes region, and how Ontario shares the same problems as Ohio and Pittsburgh.

I do not know anything about the Mexican steel industry, but it seems to me that if there are provisions for developing countries, the observation that NAFTA worked in this case might be subject to a different analysis if we had something other than this tempest in a teacup that was generated in this. And I wonder what you have to say about that.

MR. LACOMBE: I am not quite sure of your question, but if you are asking about Mexico, you know, Mexico is in the same position we are. The degree of trade and bilateral trade and the balance in the bilateral trade between the U.S. and Mexico is different than the relationship between Canada and the U.S. in steel. But Mexico is part of NAFTA. It availed itself to the benefits of NAFTA, and that was perfectly fine.

There are institutional differences between the U.S., Canada and Mexico. You know, there are different groups involved. Canada and the U.S. share the same union. We basically have similar kind of laws with respect to a number of areas, and also with respect to processes. Canada and the U.S. both have zero tariffs on steel worldwide, not just amongst themselves, not just between us. Mexico is moving in that direction, but still has tariffs.

So there are significant differences, but Mexico is a member of NAFTA. And the U.S. concluded on that basis that it should be treated as that. And I think that is perfectly right.

MS. IRISH: Thank you. Maureen Irish from the University of Windsor. Sometimes we see that market integration goes along with integrated corporate ownership. This is a question to Barry Lacombe, what is the structure of industry ownership for steel in Canada?

MR. LACOMBE: Okay. The three large integrated companies are Canadian-owned with operations - well, certainly Dofasco operations on both sides of the border, but both Stelco and Algoma have, obviously, customers and buy supplies, but they are Canadian owned.

Ispco running out of Regina and Chicago is Canadian. It has significant operations in the U.S. And Gerdau, which is a Brazilian company, is operating in Canada. It is running three mills in Canada. Ispat, which is part of the worldwide Ispat Group, has Ispat Sidbec in Canada. But, you know, the bulk of Canadian production is done by the integrated companies.

MS. CRIBB: Yes, Dr. King.

PROFESSOR KING: Yeah, I wanted to get a forecast from Charlie Blum as to what the outcome of the U.S. case would be. Obviously, you said it violated the WTO. Where do we go from here? What is going to happen? What is going to be - you know, you raised the question, now we want to know the answer?

MR. BLUM: Well, of course, the measures were terminated by the President in December. And I think, actually - and, then, thereafter a number of
the other safeguard measures taken around the world were also terminated, not all of them.

It is a good thing for the President that he did this, because while we were not watching there was a profound shift in the market. And so around Christmas day, somewhere in there, there was an extraordinary leap in prices that is continuing to this day. The prices in this country have not peaked. Probably next month we will peak at levels we have never in history seen.

So had the President kept in any form the 201 measures, he would be under a terrific criticism today for his stupidity. You know, prices have doubled. In fact, in some cases people have had to pay on the stock market four times the price of just a couple months ago just in order to stay in business.

This is creating enormous strain and stress throughout the consuming industry. It has created at least one bankruptcy that I am aware of. And it - eventually, what you are finding is that some of the OEM's, and the Department of Defense importantly, are refusing to accept any price increases. So they are putting terrific pressure on the people in the middle whose material costs have gone up hugely and are unable to pass the costs forward.

If there were a 201 measure in effect today, the White House would be meeting every damn day on it. I mean, it would be just an unbelievably difficult problem. So they got lucky, I think, timing-wise. So we do not have any, you know, steel regime in place today except for the countervailing duty and anti-dumping remedies that are in place.

We suspect - there is actually one new set of cases on pipe that have been filed. There are rumors of more. Could happen. Despite the high prices, there has also been an increase in costs, so that foreign producers might be dumping at extraordinarily high prices. That is conceivable. You have to also factor in exchange rates that are, in some cases, quite volatile.

So, I mean, I think we are back in sort of the status quo ante where the United States is once again looking for a steel policy. I think one of the legacies of the 201 is that steel is too hard to do.

I think that there’s going to be a tendency to, and I think we see this already on some specific issues that come up if steel is related to it, this Administration, anyway, doesn’t want anything to do with it no matter how sensible it is, no matter, you know, how useful, how needed it is.

If it is about steel, it is too hard to do. And I think that is one of the unfortunate short-term legacies, anyhow, of the 201.

MS. CRIBB: Barry had a comment.

MR. LACOMBE: Yeah. I just, Charlie, actually, kind of made it, but before everyone throws their hat in the air saying, gee, steel prices are really high, the price of scrap is also exceedingly high, as is the price of iron ore, as is the price of natural gas. And, in fact, in many ways the cost structure has really spiked up. So it is not that this is all leading to larger, much larger margins for the steel sector.
The other thing Charlie mentioned was exchange rates. I mean, you know, you see countries actually in there spending a lot of money in foreign exchange markets, or to make sure that their currency is not appreciating, perhaps, the way it should. There are others who peg their currency a low values.

So there are still a lot of these fundamental issues in steel. And I agree with Charlie, there has to be some way of trying to break through these, because if you really believe in markets, then let's make sure we have markets.

And there is another issue that is big in steel, and that is China. China is increasing its capacity incredibly. It builds the equivalent of a Canadian steel industry every ten months. It is soon going to be representing 30 or 35 percent of world steel. It is one of the reasons why everything else has spiked up.

But when that bubble bursts, you are going to see a lot of - because I cannot imagine China wanting to let all these people, you know, let us let market forces work, and let us just shut down these mills. I do not see it happening that way. So I think there is a big issue.

And I think you are exactly right, there has to be some way of getting through all this, and trying to develop something that is going to really bring market forces; and, therefore, some stability to steel.

MS. CRIBB: And another interesting legal issue arising out of all this is, as Barry says, scrap prices have just risen tremendously, and made it tougher for a lot of the domestic producers here. And there is a provision under the U.S. laws very rarely used which allows an industry to petition for export controls.

And there have been rumors that some of the steel, some of the U.S. steel producers, particularly the mini-mills that use scrap, may file one of these petitions which would be kind of venturing out into the unknown in trade law, because I think it's been maybe since 1979 or so that anyone's tried to use this provision.

The statute was written at a time when Congress was not as detailed about the trade lawsuits. It is pretty vague, and has a very, very fast schedule under which the Commerce Department has to respond. So that could be really interesting if that happens.

MR. LACOMBE: If I can just add to that, because this comes back to the importance of information and understanding. You know, the U.S. is moving down the line of perhaps looking at this export controls on scrap. So one of the things we made the U.S. aware of, at least U.S. industry aware of, is that Canada exports 2.3 million tons of scrap to the U.S. And we import 1.1 million tons back.

So, you know, if Canada were to be included in that, well, geez, we would have a lot more scrap, wouldn't we? Ultimately, it comes back to people just knowing the facts. There is a lot of that which is not known.
And then trade cases, I heard people talk about well maybe we should get rid of anti-dumping or CVD, and you know, hopefully we would support that. It is not going to happen, certainly, in my lifetime.

But, nevertheless, in steel, there are very few cases taken between Canada and the U.S., very few.

And you know why? That is because understanding between the two industries, and knowing what is going on in the way in which the market works.

And that in the short run, it seems to me, is a way in which progress is going to be made on this issue, sector by sector by sector. Because I, in my lifetime, would be very surprised to see, some sectors reach the point where the U.S. side, or maybe the Canadian side, is going to say no anti-dump or CVD. But there are sectors where this can move forward.

PROFESSOR KING: Well, I think we have to adjourn at the moment. I think this was a great discussion. Did you have any further comment?

MR. BLUM: There was one last question if we can squeeze it in, maybe.

MR. BARRETT: I just wanted to ask again about the politics of the situation. Is it as simple as who is going to carry West Virginia in ‘04?

MS. CRIBB: Not this time around.

MR. BARRETT: And, you want us to look at, this thing may have resulted in something of a political embarrassment for the Bush Administration. Is there a lesson here for politicians in the future such as international trade always cuts both ways, and things are very fluid in any case, maybe it’s not such a wise idea to try to step forward to pursue special interests kind of policies in this area, maybe people should just lay back, lay off?

MR. BLUM: I would comment, I mean, I think your general proposition is absolutely correct. And as the world steel industry integrates, whether it is by ownership like Ispat is doing, or whether it is by very close, you know, supply relationships, which is the reason we had all those exclusions. I mean, we had what, I guess it depends how you count them, but 3,000 specific requests where consumers needed a foreign product. They depend on the foreign product. It is their only source of supply.

That is the way the world is going, and it is going to be very difficult to reverse it. And so these kind of general measures, I think, become increasingly harder to implement unless you really think carefully about what the market requires. I would like to, though, editorialize once on this West Virginia theory. Troy, you mentioned it. This is the popular perception; supposedly, Dick Cheney said we made a pledge to the people in Weirton. Well, if you go back and look at the pledge, the pledge said, “We won’t forget you.” That is what he said that day, “We won’t forget you.” What does that mean?
That could mean anything in the world. It could have meant, okay, we will take care of your retirees, okay, which they have not. They have sacrificed their retirees without batting an eyelash.

And if you listen, actually, you can hear this on the radio; I heard the United Mine Workers ads on the radio coming up about the loss of benefits to retired coal miners. You are going to hear the same thing about steel workers, and all kinds of other people.

So I think that was a cover story. If I can say, it is not really a partisan issue. That is typical of the Administration. They explain their actions by something that is plausible, but not really true.

What the real reason for the 201, the only reason, really, for the 201, was to give political cover to 20 Republicans in the House of Representatives whose vote was needed for the TPA.

And as it turned out, they needed every single one of them to get this through.

That happened what, 6 weeks after the relief was proclaimed. And as soon as it did, the White House lost interest in this program completely. It was a very short run political objective. They got it, and then they tried to walk away from this.

And, for me, that's part of the truly objectionable part of this. It was not a serious effort to deal with a really serious problem.

Trade promotion, fast track authority, yeah. And that was the one thing that Bob Zoellick wanted, and they used us to get it. And as soon as it was done, they had no more interest in the successful operation of this program.

MR. BARRETT: Don't you think because the United States is 50.2 or 51 percent, one way or the other, sharply divided in politics that it takes away? And regardless whether it's steel, or whether it is Democrats or Republicans, I think you will find this whole process, it is to get the vote of the TPA to do something, or it is to get a tax relief, or it is to get additional Medicare coverage or whatever. It seems to me the whole process is becoming politicized and affecting industry in many different ways.

MR. BLUM: Yeah, sure, but that is part of life. I mean, that is never irrelevant. But policy is policy. You ought to have the right to serious objectives, and you ought to carry them through to some conclusion.

MR. GELFAND: The politics are always going to be there, but once they initiated the 201, they did not have to do anything else because then it got worked through.

PROFESSOR KING: The important thing is we have got to eat. You guys did a wonderful job.

(Session concluded)