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Discussion Following the Remarks of Mr. Mach and Ms. Anderson

Discussion

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DISCUSSION FOLLOWING THE REMARKS OF MR. MACH AND MS. ANDERSON

QUESTION, MR. LAYTON: The maritime provinces have a very different position in this dispute because they have mostly private wood lot land. How does the federal government deal with the different views of the provinces from British Columbia on one end to the Maritime Provinces on the other? The Maritime Provinces feel there is not the same case against them as there is against other provinces. How does the federal government from Canada deal with that?

ANSWER, MS. ANDERSON: On this point, I want to disagree with Mr. Mach. He suggested that in the negotiations of the softwood lumber agreement in 1996 was probably harder on the United States Trade Representative (USTR) negotiating with each province than it was with anyone else. Nonsense, it is a divide and conquer strategy. If the provinces want the best outcome, they have to quit negotiating separately. That is my particular personal view.

QUESTION, MR. JONSHON: It seems to me this coalition seems to be able to get the U.S. Government to do things they basically hate to be doing, for example, the export taxes just before the Free Trade Agreement (FTA) came into effect, they got the Canadian Government to impose an export tax on softwood lumber, and they turned around and the FTA prohibited export taxes because they were probably quite rightly so enraged at the export tax they were charging on oil.

The Agreement on Subsidies and Countervailing Measures (SCM), or at least the Safeguards Agreement, has a prohibition on Voluntary Restraint Agreements (VRA) and yet you have the Softwood Lumber Agreement (SLA) negotiated as a VRA. The coalition just seems to have incredible clout with the U.S. Government. One would have thought that the U.S. interest was to get Canadian resources cheap, and not have them cost too much and here, they cost more than they should. Could you just give some of the political dynamic why these guys have this extraordinary clout that other groups do not seem to have in the U.S. and bend the U.S. Government into doing things that I do not think the U.S. Government on principle would like to do?

ANSWER, MS. ANDERSON: I do not think the Canadian softwood lumber should feel singled out. They are one of the primary targets of a group. It is not an industry, by the way. It is a piece of the U.S. industry that remains willing to pay big bucks for big lobbying.

The steel industry remains willing to do that. There are a few others who are willing to do that; and when you are willing to lobby very strongly for something in the U.S. system, you are likely to get enough Congressional pressure on an administration that they will do things that they do not want to do.

That is what happens. I think, actually, the current petitions are very interesting that the effort of these petitions seems to be more on the lobbying front than on the evidence. I mean it may have been the conclusion that if they could just get enough Senators to say, "We are for this," then the case would go forward and that will intimidate Canada into another five years or how many other years of protection for the U.S. industry.

QUESTION, MR. ROBINSON: Do you think there is any real prospect for getting eminent persons to work on this dispute, to get that process of resolution going?

ANSWER, MS. ANDERSON: That is a question that I cannot really answer. I mean that discussion has been completely between the Canadian Government and the U.S. Government. Lawyers like me have not been engaged on that.

I would add, from a personal perspective, there is an odd thing that goes on in Canada and that is that people say, "We have got to convince the U.S. Government that we want free trade in lumber." That kind of misses one big piece of the picture, which is that the U.S. Government might think free trade in lumber would be just fine. What does free trade in lumber mean?

The fact is that the U.S. and Canada, and every other country you can think of, has trade remedy laws and those laws give industries the right to bring cases. So then the question is, will the cases be administered in a way that is fair so that if there is really not an unfair trade problem, that will be the answer. People talk about talking to USTR about getting free trade in lumber, and USTR could not promise anybody free trade in lumber if they were the last people on earth. They simply do not have the authority to do that.

I am not sure this is related to the envoy question, but it is a little bit related to envoy. The idea of the envoy is fundamentally a good one if you had good faith on both sides of the border to look at the area of North American lumber issues on both sides of the border, and see what is going on here, because it is not a one side of the border issue.

On the U.S. side of the border, they have a major supply problem because supply has been cut back on the national side of the forest. I happen to be for that as an American who likes forests and does not want them cut down. They have a supply problem in the Pacific Northwest, in part, due to that.

The southern producers are probably worried because, any day now, the environmentalists who have been getting in bed with the U.S. coalition softwood lumber case from Canada one of these days are going to turn their sights on the U.S. south and say, "Why does the U.S. South have no environmental requirements on timber production and timber lands?" The U.S. South knows that is coming. I mean they have to know attention is coming in the south; and so they are worried about in the U.S. the ability to produce softwood lumber and stay competitive. It is a big set of problems in the U.S., and that is only one of these sets of problems. Canadian producers have a set of problems that people of real good faith could sit down in a room and discuss those things without a political agenda, and without a negotiation agenda, maybe something would be learned, but I do not think we are there.

QUESTION, MR. TENNANT: You have painted the short-term picture. The assumption is this can play out for a very long time. You are unlikely to be able to predict where the Bush Administration might be in two years or four years, I am wondering what are some of the longer term factors about the free trade credentials of the new administration, how should Canadians develop their expectations for the types of things you are saying are not apparent yet?

Beyond softwood lumber, Canada has been faced with the short-term issues you have cited. They have to build some constituency for their agenda to move on various things, might they become a seriously principled administration over two years, three years, might they show more ability to stand up to some of the special interests and political pressures in the U.S.?

ANSWER, MS. ANDERSON: Well, at minimum, they would stand up to interests.

I think there is some chance of a fundamental principled idea of trade liberalization, a focus on trade negotiations, very strategically designed to give the U.S. leadership and look out for U.S. interests. This is not altruism.

No government is purely altruistic, although, I believe, any government in this day and age that looks broadly at trade liberalization has to look at it in terms of what does it do for the entire world, and that means very much what does it do for developing countries and so on.

I want to say it is self-interested, but self-interested means much broader. I think it is quite possible, if not reasonably likely, that this government, this administration, might get there. I think they are headed toward trying to get trade promotion authority in order to negotiate, you know, more openness, and with that will go things that are good for the rest of world and not only the U.S.

How soon they succeed, is another issue. They have to get over the labor and environment question. One of the ironies of life is that in the North

American Free Trade Agreement (NAFTA) negotiations, Canada said we will not have trade sanctions for trade and environmental issues, labor and environment, and Canada negotiated this very special set of fines. They could be fined, but they could not have trade sanctions; and, suddenly, that has become a possible solution in the U.S. context for dealing with labor and the environment, although the idea for that is now being credited to any number of U.S. Congressmen.

QUESTION, MR. POTTER: I should disclose a conflict before I ask the question. I represent the Quebec softwood lumber industry.

Before asking my question, which is for both of the panelists, I think it is worth mentioning a point which was raised by Mr. Mach, and I fear that some people in the audience might have concluded by your comments that the softwood lumber agreement capped exports from all of Canada, and that is not the case. It only capped exports from four provinces as, of course, you know.

In fact, exports from other provinces did increase during the currency of the softwood lumber agreement.

It appears that we are headed in that kind of direction again as the Canadian coalition has moved to exclude, one way or another, the Maritime Provinces from the Countervailing Duty (CVD) investigation.

My question is are we losing sight of a fundamental question? Are we by engaging in this debate that we are in right now in this room losing sight of the fundamental problem? Is it so that stumpage rates, which are too low, are necessarily a subsidy? I hope we are not losing sight of that fundamental question. Why should not a province be able to charge just whatever it likes for the right to cut wood and to look after the forest lands and the roads in the way the province wants? Why is a stumpage rate necessarily a subsidy if it is by some calculation "too low"?

Is not there a fundamental question there that we are forgetting?

ANSWER, MR. MACH: First of all, with respect to the issue of coverage, I was going through my presentation as quickly as I could. I apologize for not making all the references clear, that most of these actions were directed at four provinces, Ontario, Alberta, Quebec and British Columbia. I mentioned that those provinces were mentioned in the negotiations. The other provinces have not been covered in the investigations or agreements for various reasons.

The reference was made earlier by Ms. Anderson about the necessity to not negotiate as individual provinces that this is a difficulty in terms of bringing about a resolution.

I guess one comment I would like to add here, is that the interests of the province are very, very diverse, and you have a situation, where because of

the structure and the ownership of forest lands of those provinces, they feel they are in a situation of being able to demonstrate easily under U.S. law there is no subsidization; and, therefore, they should be excluded from any countervailing duty, as well as, therefore, being excluded from any negotiated resolution.

You have other provinces, such as Ontario and Alberta where, certainly, we would not like to see a countervailing duty implied on our softwood lumber industry, but, in terms of the impact on the overall economy, it is relatively small. Alberta's exports are approximately fifty-five billion dollars. Our softwood lumber exports account for about six hundred million of that.

It is not if there would be a phenomenally drastic effect on the Alberta economy of a duty on exports.

Certainly, with what we heard with respect to Ontario and its manufacturing situation, its level of exports of softwood lumber products of the province overall is not that significantly effected either.

However, you look at British Columbia, where the forest base is such a large component of its overall gross domestic product and employment, and you have a situation of suggesting to British Columbia that they should do nothing but fight a countervailing duty action, and accept whatever countervailing duty comes out of the other end, which may mean from their perspective a transfer of funds between six hundred million dollars and one billion dollars a year that could go into their treasury instead of going to the U.S. Treasury. That puts a different perspective on whether or not there is desire to negotiate a resolution.

So, you know, it would be very nice if we all had identical interests and consequences that would facilitate a complete consensus in Canada, but, as I mentioned before, just in dealing with something on the softwood lumber agreement, there is not a consensus in Canada, and that is because of the dramatically different impacts of both the agreement and the effects of the countervailing duty rate.

With respect to the comment about stumpage rates, I guess we certainly agree. From our perspective, the stumpage rates are not a countervailable subsidy. That is what we are trying to prove through all the various procedures. That is what we thought we had won with the Countervail 3. However, as I said, there has not been that fifth state of resolution, which has been acceptance on the part of the United States of that concept.

ANSWER, MS. ANDERSON: I would add, certainly, I do not think that a stumpage rate that is not negative is a countervailable subsidy because I do not think it fits the definition in the subsidies agreement, which has been incorporated into U.S. law. I think that will get fought out in the World Trade Organization (WTO) because the U.S. will not decide and accept that.

COMMENT, MR. HERMAN: The interesting thing in this case, unlike the previous softwood cases, is that WTO is the Court of last resort. It was not in previous cases. I think that changes the landscape significantly.

QUESTION, MR. ROBINSON: This is a technical question.

Can you tell us what the changes in U.S. Countervailing Ad-Valorem Duty (AVD) laws between Softwood 3 and 4 have been? We keep reading in the paper there have been changes in the law that make it easier for the U.S. to make this case out. I am not sure what they are.

ANSWER, MS. ANDERSON: You are going to be sorry you asked this question. The short answer is there is a provision in the Uruguay Rounds Agreement Act, the countervail duty law, and the U.S. statute implementing the WTO Agreements that says the Commerce Department does not have to determine or does not have to look at the effects of subsidy to determine that there is a subsidy. I mean that is not the language, but the idea was they do not have to look at whether the subsidy had an effect on the price or output of the product under investigation to determine that it was a subsidy. This is a consequence of an argument that Canada made and won in the NAFTA Panel in Lumber 3, and it actually goes back to the stumpage subsidy in the first place, because we had shown through economic theory and empirical evidence that the rate of stumpage, as long as it was not negative or a change in that rate, wasn't going to effect the price or output of a log, or effect the price or output of softwood lumber. If it does not affect the price or output of a log, then it is not a subsidy to lumber.

They kind of got it wrong in the U.S. statute. We will see what happens.

QUESTION, MR. ELGIE: I am certainly not someone who favors U.S. trade sanctions against the Canadian timber industry, but we are probably getting a short shift on the U.S. side on this position.

It strikes me without wanting to unpack all of the subsidy issues, because I know stumpage and log export are complex issues, there is some validity to some of the arguments that we hear from the U.S. side in favor of subsidy.

Let me throw out two or three from British Columbia that I am familiar with and get your reaction to it.

One of them is, one that my organization unwittingly brought up and found itself in the middle of, the softwood lumber dispute, and stumpage price shaving in British Columbia. A practice where stumpage prices are set typically in the first year of an agreement, and they are based on the value or the average value of the timber logged in your tree farm license area in that first year. What is happening in British Columbia is often they have a practice of cutting only the low value timber in the first year, and cutting it at low levels to set the stumpage rate very low, and after a year cut the heck out of it, taking all the high timber value and save millions and millions. We actu-

ally released a report after a year's investigation on this. The British Columbia Government initially denied it; then said, "Yes, you are right." We lose millions and millions a year in stumpage. Little did we know that would end up as an exhibit to the U.S. softwood lumber dispute.

An environmental example is endangered species protection. Producers in the U.S. Pacific Northwest have had to dramatically curtail logging on Federal lands and some states and private lands to protect spotted owls, grizzly bears, salmon, and other listed species. What you saw is the amount of logging levels that went down in the U.S. northwest forests went up by almost the same level in British Columbia after that endangered species act went in, and exports back to the U.S. went up by that same level.

In other words, because of the Canadian timber industry in British Columbia does not have an Endangered Species Act and was able to continue logging in the habitat of all these same species that the U.S. industry could not log in, they effectively did gain an advantage, a competitive advantage in a very real sense. British Columbia's industry acknowledges, and when you look at the long terms sustainable yield of timber logged in British Columbia, they are logging at twenty percent above the level that is sustainable in the long term; and Alberta does not do that, so that is probably not a fair comment to you, but British Columbia does not log at levels that are sustainable in the long term. Both of those are widely accepted international principles that one should protect endangered species and one logs at sustainable levels. Canada's industry is not doing it. There is also the stumpage shaving issues.

That may explain to some extent why some U.S. environmental groups are joining in this debate saying there are some environmental aspects about which we have some concerns.

What do you think of those?

ANSWER, MS. ANDERSON: Number one, I think, and this is me speaking, I think that environmentalists ought to be concerned about what happens in the forest, whether it is in the U.S., Canada, Brazil, wherever there is a forest, we ought to be concerned about it. That is my environmentalism. I think it is very dangerous to accept without an incredible amount of research behind the numbers and the allegations.

The information that might be put forward by a contingent of U.S. industry that wants protection against imports, I would look at their information and their statistics with a great deal of suspicion. To respond to the first point you made concerning the British Columbia forest management system. There has been a lot of publicity and controversy over rate setting.

I think the rate setting issue is surely a regulatory setting for British Columbia officials. I know they have been looking at it. I do not think that by itself is a subsidy.

This is not worth bringing a huge trade dispute over. It is worth fixing the regulatory problem, but if it is that, it is not a major bilateral trade dispute. I do not argue they do not have to look at it as a regulatory basis. It was rate setting.

COMMENT, MR. ELGIE: It is pretty clear, actually, that British Columbia exports and logging rates went up about the same time as the U.S. Endangered Species Act brought down the logging level of the U.S. Pacific northwest. In other words, the things the U.S. industry could not do on their side, the British Columbia industry benefited and picked up the slack in the form of increased exports to the U.S. to fill that need.

COMMENT, MS. ANDERSON: Put another way, the U.S. Pacific Northwest has an increased supply problem because, in part, of restrictions on logging because of environmental issues. That is true. It is not necessarily a bad thing that the British Columbia industry could sell more lumber into the U.S. to fill U.S. demand. I mean the U.S. cannot meet its own demand period. It only meets two thirds of it.

MR. HERMAN: I would like to ask everybody to join with me and thank both Mr. Mach and Ms. Anderson.