

January 1995

Discussion after the Speeches of Emery Simon, John Gero, and Bill F. Kryzda

Discussion

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Recommended Citation

Discussion, *Discussion after the Speeches of Emery Simon, John Gero, and Bill F. Kryzda*, 21 Can.-U.S. L.J. 109 (1995)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol21/iss/18>

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QUESTION, *Professor King*: I think it is very important what Mexico is doing. So, what you are saying is that you have no cases where there are specific examples, but are there cases in the pipeline?

ANSWER, *Mr. Kryzda*: Not that I am aware of yet. I think the interesting comment there is most of the cases are getting settled. The parties are much more ready to settle matters than to go to court too readily. So, most of the things we get involved with are settling one way or another.

QUESTION, *Professor King*: I think that is your message today; in other words, there is not a lot of litigation, but there are settlements. I think that is very important.

I had a question for Emery. Do you think that Special 301 is a threat or in other words, is it a weapon? Does it force change because it exists? Is this the real value of Section 301?

ANSWER, *Mr. Simon*: The statute basically says that you designate country authority to our country, or you do nothing to it. As we were in the process of interpreting the statute, we did not like that. You have to do either/or. We built into it all these notches and launch lists, and we never thought they would work. We never thought people would care about where they appeared on these lists so long as no investigation was initiated. They did care. So the power of all this was in the threat, and often you get a confrontation.

COMMENT, *Mr. Kryzda*: I think the threat is a very important weapon, whether it is 301 or whatever, and I think we are looking at that now in our current financial situation in Mexico. For instance, the threat of giving loans or not giving loans to help us in our financial situation is very important. And as a result, we are seeing serious talks of further amendments to the intellectual property area in order to take care of the few areas that we still question whether we are or are not compliant.

QUESTION, *Professor King*: I think that one of the messages that we have here is the fact that these are weapons that can be used. I know John Gero is offended by Special Section 301, but it keeps people in the United States, who want to go further in line, and maybe that is a way of safeguarding from further action. John, are you still offended by 301?

ANSWER, *Mr. Gero*: No. I think the real question is what uses you make of 301. If you use 301 to beat up on somebody, that is not part of an international agreement. Utilize that tool on your own, the access to your own markets. Anyone who has no laws, rules, and regu-

lations governing trade between two countries, anybody can make whatever conditions they wish to have vis-à-vis access to their own market. After all, their own markets are their own markets. That is one thing.

A different thing, which becomes problematic, is having negotiated a whole set of international rules and you find a country that is observing those international rules. But you find on this one particular point, the international rules have not gone far enough. The cage needs to be rattled a little bit more, and the country starts rattling them in a way that puts it at cross-purposes with the international obligations that you now have in the context of the TRIPS agreement, WTO, NAFTA, et cetera. That becomes problematic because at some point the U.S. administration will have to make a choice as to whether it will act consistently with its international obligations or not.

What I was trying to say was that if you make the choice of not acting within those international obligations, then you have a real problem because you risk the whole set of international rules tumbling down. I do not think that is to the advantage of the United States.

QUESTION, *Professor King*: It is very subjective as to whether you are violating the rules, and beauty is in the eye of the beholder? Do you want to comment on that?

COMMENT, *Mr. Simon*: Countries observe international obligations when it is in their interest to do so. They violate them when they can get away with it. It is just that simple.

One question about unilateralism is why has the United States engaged in unilateralism while countries like Mexico, Peru, and even Germany or France have not? The reason is that we have a very large market, and we can use it as a threat that we will deny that country access to our market unless it does X, Y, and Z. Unilateralism is a tool available to only two countries or two groups of countries right now: the United States and the European community. I do not think other countries are in a position to engage in unilateral trade policy. So if you are Canadian, you always argue multilateralism because unilateralism is never available to you anyway.

QUESTION, *Mr. Faye*: Has it been true that Super 301 has been successful in helping the United States balance trade?

ANSWER, *Mr. Simon*: John Gero says that four or five billion dollars, or one percent of the U.S. exports is trivial. Four or five billion dollars is a lot of money particularly when you consider how much you invested in getting it.

When I was getting my government tally it was not terribly much. My travel expenses were not terribly much so if we invested thirty million dollars, fifty million dollars, one hundred million dollars in getting the four or five billion dollars every year, is that a good investment? Yes, I think so.

COMMENT, *Professor King*: I am going to interpret what he is saying. He says the American rules are too broad, and Simon has said the Japanese rules are too narrow, is that right? What he is saying is a fair point. And Emery, he heard it and he took it under advisement, and it is very helpful.

QUESTION, *Mr. Buchenhorner*: I do not view the issue as being one of broadness versus narrowness. I think it is a standard of obviousness that we are talking about in that case. To what extent do you want to reward trivial inventions? I think that is where the conflict sits.

COMMENT, *Professor King*: I think we know the confines. In other words, maybe what is big to one side looks less big to the other, or vice versa, but at least we have arrived at an area of disagreement, which is a good note on which to end this session. We have got a lot of food for thought.

