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Discussion After The Speech of Leonard Legault

COMMENT, Professor King: Thank you, Len for getting us off to a wonderful start. I know we profited greatly from your observations on both sides of the border.

QUESTION, Mr. Davidow: I was interested in your comments about the trade deficit in the various export statistics. As I heard you, although U.S. exports to Canada have grown and are important, Canada has recently moved from buying less merchandise to buying more, and has moved into surplus. I think a direct statement of what you said was that the United States could somehow help its trade deficit by having freer trade with Canada, but I wasn't clear whether you were affirmatively predicting that under a free trade zone the United States will export more to Canada and that the balance will shift in the United States favor? That would be a surprising prediction, but it seemed to be necessary to your premise.

ANSWER, Mr. Legault: Far be it for me to make predictions. The general point I was making is that if protectionism, rather than a free trade agreement, is going to be the order of the day, exports, U.S. exports to Canada, Canadian exports to the United States, are going to suffer. With a free trade agreement, U.S. exports to Canada are going to be a least maintained. If you look at the trend of the last few years, and the trend has been upwards, there have been growing sales from the United States to Canada, and I certainly don't see how a free trade agreement could possible slow down U.S. sales to Canada.

QUESTION, Mr. Davidow: But weren't you saying that Canadian exports to the United States were growing faster, however fast

ANSWER, Mr. Legault: No, no.

QUESTION, Mr. Davidow: How else could you have moved into surplus in the last three years?

ANSWER, Mr. Legault: It is more than three years since the shift to the Canadian surplus began. Our surplus dates back to— I don't know the exact figures, but I think about four to five years now that Canada has had a surplus, but the surplus has been declining, because U.S. exports have been growing.

QUESTION, Mr. Miller: Being from Quebec, perhaps you will understand why the goals and objectives set out sound like the platform of the Parti Quebecois. It sounds like a program of sovereign association and I'm wondering, as I listen to you, that the logic that is motivating these talks seems to lead inevitably to economic union and it doesn't sound like political union in some form would be very far behind that.

When we talk about a comprehensive free trade agreement, I think I would retain the word comprehensive and put free trade in brackets and I wonder, was that not really the purpose; and if it is the purpose, why isn't that stated to be the purpose?

ANSWER, Mr. Legault: Well, I think I am in deep trouble. First I declared war on the United States and now I'm pulling for sovereign association. I think the government has made its position extremely clear in Canada. We are not going for an economic union. We are not going for any form of sovereign association. We are going for a comprehensive agreement, freer trade as the jargon tends to be in Canada, freer trade, if you prefer, rather than free trade, but, yes, a comprehensive agreement. An agreement that covers not only tariff barriers, but nontariff barriers. It covers investment, it covers services. That is what is meant by a comprehensive agreement. No more and no less, but sovereign association, no. Political union, no.

QUESTION, Mr. Herman: Leonard and I go back a long way and I know him as a supreme and superb strategist and I wanted to ask him a question on strategy. You mentioned the omnibus trade bills. I think that the strategy is crucial in this regard. As those bills wend their way through the congressional system, there is a possibility, it seems to me, that both the House bill, HR-3, and the Senate bill, S-490, will be in conference in October or late September. That means that they might well be before Congress at the same time that the comprehensive trade agreement is before Congress. It seems to me that that is the worst possible scenario.

I would like to ask you what you think about that and the implications that would have on the conclusion or approval of the trade agreement. My own view would be that under these circumstances the better scenario by far would be to have the conference approve the trade bills in advance of the submission of the comprehensive trade agreement. If the conference committee and the Senate are dealing with both at the same time, I think there's a great danger that the trade agreement would be held hostage to the conference approval of the omnibus bill and I wondered what your views were of that crucial question of timing.

ANSWER, Mr. Legault: First, I think it is a genuine possibility that the free trade agreement might hit the Congress, at the same time that the conference between the House and the Senate is proceeding. There are mixed views in Washington within the embassy as to whether that is necessarily a bad thing. Certainly you can see the possibilities for difficulty as a result of that kind of coincidence.

We do not at this stage have a firm view as to whether that's going to be a genuine difficulty and just what we might do about it. We are still reviewing those very questions. I can't say anything more about it at this time.

QUESTION, Professor Sohn: It seems to me, with respect to his last

question, that it is really very dangerous to have those two things happening at the same time and also I think it would be dangerous for the bill to be adopted after the agreement has been approved and accepted by the two countries. As you know, in the United States a later piece of legislation can overrule a previous agreement and it would be better in the other scenario; that the agreement would be approved officially and combined after the legislation from that point of view.

ANSWER, Mr. Legault: Yes.

QUESTION, Mr. Sohn: How can it be achieved? I wonder whether you have been thinking about persuading the United States to extend the fast track for say six months. That way it will permit all of the advantages of the fast track to be accomplished after the omnibus bill is accepted.

ANSWER, Mr. Legault: The answer to your second question, Professor Sohn, is no, we have not been thinking of extending the fast track authority. I should point out, however, that so far as adopting the legislation to implement the free trade agreement, that would certainly come after the adoption of the omnibus trade bill, because that wouldn't happen until 1988, some time between January 3rd plus 60 working days. That's when the implementing legislation would be adopted, so that would certainly come after the adoption of the omnibus trade legislation.

QUESTION, Mr. Aretz: I would like to ask the flip side of that same question. To what extent are the Canadian Federal Government's hands tied by the necessity of the provinces enacting and implementing many of the types of legislation which would be necessary in order to carry out the free-trade agreement?

COMMENT, Professor King: Did everybody hear the question? It is the question of the role of the provinces in connection with a free trade agreement on the Canadian side, what are the possibilities in that area?

ANSWER, Mr. Legault: Questions of war and peace pale in their perils before questions of federal/provincial relations. I'm going to dodge that one and I'm simply going to say that we are confident that what has to be done with the provinces will be done with the provinces.

QUESTION, Mr. O'Grady: I was just wondering about the political opposition in Canada, Mr. Legault. I have heard Bob White and his people express it, and it often seems rather persuasive in its own terms, but the intuitive feeling seems to be the very reason that we have done so well in the North American economy with our small population and our severe climate and so forth is precisely because we don't have a level playing field. We somehow parlayed financing from Wall Street, and a great deal of intervention on the part of our own government, into a successful formula. They seem to feel intuitively that if we get a level playing field, we will do worse than we have done. I wonder how you respond to that sort of thinking.

ANSWER, Mr. Legault: I'm not an expert, far from it. I'm not an

economist, but those who are certainly don't share the view of Mr. White and his colleagues. Those who are, at least those that I have been hearing, certainly take the view that in a situation where we have the ability to compete, we will be able to compete. Of course, there will be sectors where there will be adjustment.

There will be, as I tried to suggest, areas where there will be some pain, some adjustment, some price to be paid, but it seems to me that what we must not fall into is the trap of thinking that the alternative to a free trade agreement is the status quo that we have known until now: it is not. The status quo of two years ago, three years ago has changed very much.

Take softwood lumber. Three years ago we won a CVD case in softwood lumber. This last year we were very clearly heading for defeat in a softwood lumber CVD. That's a very big change indeed in the status quo. It is only the beginning. This omnibus trade legislation that is coming out is going to spell yet another difference in the status quo that we can't entirely predict at this stage. The conditions that allowed us to do what we have been doing up until now are not necessarily the conditions that we are going to be facing in the future and it seems to me that that's what we have got to look at; not the situation we would like to see exist, but the one that we know will exist.

QUESTION, Ms. Dallmeyer: While most Americans would welcome any dose of optimism about our deficit, I wonder if you don't overstate the case of Canada's ability to assist in alleviating part of it, given Canada's smaller population with ultimately a limited ability to absorb goods, as well as the potential for displacement of jobs in Canada by exporting services? So I'm reluctant to bankrupt our neighbor; but if you are an optimist, would you like to put any dollar figure on the amount that Canada might be able to absorb?

ANSWER, Mr. Legault: No. I would ask, though, why is it that this small market that you are referring to, of 25 million people, if it is so small, if it is so insignificant, why does it occupy the place it does in U.S. international trade at the present time? Why are we your best customer?

QUESTION, Ms. Dallmeyer: My question would be what portion of that—

ANSWER, Mr. Legault: What more can we do for you?

QUESTION, Ms. Dallmeyer: What portion of that is related to automobile exports or transport back and forth across the border and what would be the actual—

ANSWER, Mr. Legault: A substantial amount, I believe.

QUESTION, Ms. Dallmeyer: —goods and services outside of the Autopact?

ANSWER, Mr. Legault: I don't know the percentages, but I believe it is a substantial amount that is related to the automobile trade.

QUESTION, Professor King: One question that occurs is, how do

you see an agreement as related to the Autopact with its production standards and guarantees? How do you see the trade agreement vis-à-vis the existing Autopact in place? Are changes going to take place?

ANSWER, Mr. Legault: This is second only to federal/provincial relations in terms of potential explosiveness. I wish Simon Reisman were here. He ought to be facing these questions. I will tell you what I know about the Autopact. The only changes that will be made to the Autopact are changes that might make it better. Automotive trade is on the negotiating table, but, at the present time at any rate, the Autopact is not. So far as Canada is concerned, the only changes that might be discussed with the Autopact are, as I said, changes that might make it better.

QUESTION, Mr. Potter: Mr. Legault, I find your logic so compelling that I can't see why it should apply only to North American trade. If our present rules lead to destabilization and uncertainty and unpredictability, aren't you saying that we also have destabilization and unpredictability and bad rules for Canadian offshore trade and, for that matter, for U.S. offshore trade? So my question is, why just the United States? Why aren't we discussing that?

ANSWER, Mr. Legault: My answer is that it is not just the United States. There is something called the Uruguay Round that is going on right now and we are in there participating very actively.

QUESTION, Mr. Potter: So you do see this simply as a first step towards an agreement which will not be a U.S./Canadian agreement?

ANSWER, Mr. Legault: No, no. I see this as one part of a two-pronged strategy, one bilateral and the other one multilateral and there's no contradiction of any kind between the two.

QUESTION, Mr. Bilder: You mentioned the need for quickened, binding procedures for the settlement of disputes. I wondered if you would want to comment a little more about what you see and, in particular, is it your opinion that Canada would be interested in autonomous types of binding settlement. An independent tribunal which would bind Canada, for example, in corn, things that you know can't impose countervailing duties on. Do you see that as coming?

ANSWER, Mr. Legault: We certainly would see preliminary steps that might be gone through before you reach that point, fact-finding or conciliation, that sort of procedure. But in the end, yes, we believe in the final analysis you must have a binding process. We have got to go from unilateralism to bilateralism.

QUESTION, Mr. Bilder: Would that create problems for Canada legally in terms of telling the government you can't do what you want to do?

ANSWER, Mr. Legault: There are some interesting legal issues that arise on both sides of the border in this connection, but despite these legal complexities, I believe that the conclusion is—to use an American expression, it is doable.

QUESTION, Professor King: I have a question on rules of origin. In terms of percentages, or perhaps more specifically, how do you visualize the rules of origin as under a free trade agreement?

Do you see any targets there so that other countries don't just take advantage of this new arrangement between the United States and Canada, which might in a way be self-defeating if it is too broad?

ANSWER, Mr. Legault: Well, on both sides there is a determination that third parties are not going to benefit from this arrangement. We are paying the price and we are going to get the benefits and those benefits are for our two countries; not for anyone else. As to specifically what may be done in relation to rules of origin, this is an issue that is still under active discussion. It is a complicated issue. Even if there are resolutions and I don't think we have come to a common view on that yet, I don't think it would be something that I could announce at this stage.

QUESTION, Professor King: I see. In terms of exceptions to a free trade arrangement, you have talked about across the border, services, goods—

COMMENT, Mr. Legault: Henry, I thought you were my friend.

QUESTION, Professor King: You have the privilege of not responding. You are free to respond, and we would love to have you respond. Do you see any exceptions to this? We have had a lot of talk about cultural sovereignty with Canada. Are their exceptions that Canada would see as required under a free trade agreement or are there exceptions on the United States that we haven't talked about?

ANSWER, Mr. Legault: There are three no-no's that you keep hearing about; social programs, regional development programs, and culture. These were all three identified, for instance, in the debate in Parliament a couple of weeks ago. The one that gets the most attention is culture, but to refer to that as an exclusion may be too big a word to describe something that is of extreme importance in Canada, but that need not, at least in my judgment, loom that large as a so-called problem in the trade talks.

It is very difficult for me, or anyone else for that matter, to go very far in responding to these kinds of questions, because the negotiations are being held, as you know, in strict confidentiality.

QUESTION, Mr. Raines: I just wanted to ask you to elaborate a little bit on a figure that I think you mentioned, that 80 percent of Canada's exports now go to the United States. What do you see happening to that figure in the wake of a comprehensive free trade agreement and how would our government's avowed confirmed interest in the multilateral approach square with it?

ANSWER, Mr. Legault: I certainly don't see the day where our trade is 100 percent with the United States. I don't know whether the trade will go from 80 percent to 85 percent. Again, I'm not an economist. I really cannot answer your question, beyond saying this, that at

the very least a free trade agreement will protect our ability to sell in the United States market.

COMMENT, Ms. Delagran: Just a follow-up comment to the bilateral versus multilateral question. I think it is interesting that Richard Harris is widely quoted in Canadian economics circles as justifying a free trade agreement because it will increase economic efficiency in Canada. He did several studies, one of which showed that in bilateral trade with the United States, Canadian manufacturing production would switch away from electronics to developing a comparative advantage, vis-à-vis the United States, in textiles and leather, in which it does not have a comparative advantage multilaterally. What you see is in the context of a North American economic trading environment is Canada switching to areas of production where it does not have an international comparative advantage, and essentially, in several ways, the two movements of going bilaterally and multilaterally are contradictory.

COMMENT, Mr. Legault: I find that rather difficult to believe, that these should be contradictory. In that case, the European Common Market, their arrangements would be contradictory and they would have no reason to pursue the multilateral trade negotiations, which certainly doesn't seem to be the case there. Again, I don't know enough about economics to be able to give you an expert answer to that question, but all I can say is it seems like a pretty farfetched conclusion to me.

QUESTION, Mr. Graham: A couple of years ago, as Canadian Counsel at an international law meeting in Ottawa, you said, as I recall, that after your Gulf of Maine experience that the only thing cheaper than international arbitration was war, and that might be a solution to the next dispute. It seems to me that we have talked about the comprehensive arbitral system put forward by the Canadian Bar Association and the American Bar Association and a lot of people in this room have worked on that issue and yet we have no response from any of the governments at all.

Now you are saying, in the context of a free trade arrangement, that a form of binding arbitral dispute resolution mechanism is essential. I wonder if you could help us by telling us why this is a different paradigm, or whatever word you want to use, in this context? Why is it so different in this context and why wouldn't it apply generally? Why did we move from what appears to be the general approach to a very, very different approach on this issue?

ANSWER, Mr. Legault: What I said in Ottawa was that I thought war was quicker, cleaner, and cheaper than international adjudication of the kind that we have gone through in the Gulf of Maine case. That, of course, was a bit of hyperbole. What I had in mind was that the process had taken from the time we set out to negotiate the compromise, the special agreement, to the time that we actually got the result. I think the negotiations began in 1976. The decision was handed down in 1984. You had to agree as to whether or not you were going to adjudicate.

You had to determine, then whether you were going to go for an ad hoc tribunal or the full 15 members of the International Court of Justice or a special tribunal of the International Court of Adjusters.

Having made the decision that you weren't going with the full International Court of Justice, but with a special tribunal, you had to decide who were to be the members of the special tribunal; and if you think that is easy to negotiate, it isn't. Once you had gotten through all of those preliminary questions and having to negotiate to a considerable extent with the International Court of Justice, itself, to get that far, you had then to proceed with the adjudication on the basis of the rules of the International Court of Justice and in accordance with their traditions.

That is all, I think, quite different from the kind of bilateral mechanisms we could set up between Canada and the United States. A lot of the complexities, a lot of the procedures that take so much time for the other kind of adjudication, would not be present in the kinds of arrangements that you can negotiate bilaterally.

QUESTION, Mr. Graham: That is not true of the 300 agreements that we sought between Canada and the United States in every other respect. The Canadian government and the American government have always rejected special systems. Now, what is so different in this case?

ANSWER, Mr. Legault: If you are suggesting that having determined that binding dispute settlement procedures are required for the proper application of a free-trade agreement, then there's no reason why we shouldn't have them for all other areas of the relationship, my only answer can be non sequitur. It just doesn't follow.

There are, I think, legitimate reasons why governments prefer, in the resolution of disputes, to keep all possible flexibility in their approach, and especially to keep all options opened. The first option, the first preference, is always negotiation. That simply isn't workable in the context of a free-trade agreement.

QUESTION, Mr. Erdilek: You touched briefly upon investment-related trade issues occupying some of the negotiations. In your presentation of the bilateral issue between the United States and Canada, you have not really touched upon the fact that the United States is the most important host country for Canadian direct foreign investment and Canada is the most important host country for United States direct foreign investment. That is one fact.

The other fact is that more than 50 percent of the bilateral trade in manufacturing between Canada and the United States is in intratrade. It is the trade that takes place between the parent company and subsidiaries on either side of the border. Do you think that any viable comprehensive bilateral free trade agreement can really be sustained without having a specific bilateral investment treaty?

ANSWER, Mr. Legault: Well, as I pointed out, at least some aspects of investment are already being discussed in the free trade negotia-

tions. The United States wants a wider approach and all I can say at the moment is that Canada is listening to what the United States has to say about a wider approach. I can't go any further than that.

QUESTION, Professor King: In connection with the construction of a facility, a large car company was granted an interest-free loan in Quebec. Now, do you look upon this as a situation where many types of assistance will be given in anticipation of the free trade agreement? Do you look at a lot of things being done before this gets into place, so that it is being done before the fact rather than after?

ANSWER, Mr. Legault: I'm going to give a politician's answer. No.

COMMENT, Professor King: Well, Len, you have been very gracious. You have had an awful lot of questions from all sides and you acquitted yourself extremely well and we thank you for it. Thank you.

