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Discussion

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DISCUSSION AFTER THE SPEECH OF STUART SMITH

QUESTION, PROFESSOR KING: Stuart, I had two questions. One, it seems to me that, if you are going to accomplish your objectives, one thing you need to do is to build institutions. I think that, otherwise, it is voluntarism. If one does not comply, it provides an excuse for the other not to comply. My first question is, drawing a blueprint of an institution as you visualize it, can you give us some of the functions and the detail that such an institution would have?

In a totally free market economy, which I accept with some reservations, I think one of the problems in environmental compliance is the threat to move. I know one large company in the east threatened to move its plant out of a certain location if environmental sanctions were enforced. The mobility of corporate facilities in a free market is certainly used as a device for non-compliance of environmental standards. The corporations, in effect, use that threat to rob people from the jobs that they have and destroy their sense of security. So, what should be the blueprint for the international organization? My second question is, should there be limitations on free market and plant mobility?

ANSWER, MR. SMITH: I will deal with your second question first. I do not see how you can have limitations on the free market. I do not believe nation-states are powerful enough to do that. The United States may be the only one that could try, but there is nobody else who could seriously try to do that. The Japanese, of course, have a kind of social pressure that they can use to keep people where they are, so people there are not so ready to move. Even if you do not move and pick up lock, stock, and barrel, just the threat of shifting the next increment of production to another plant somewhere else is quite enough to bring governments to their knees. This happens all the time. In Canada, it happens between provinces. A company in industry X that has operations in more than one province can easily say, if you pressure us, we will just simply shift. We will not close down, but we will just slow things down a bit here and we will increase our operations there. We will do that little bit of expansion we were going to do, but we will do it in the next province.

So, I do not think there is a way to prevent this, and I think it would be foolhardy to try to pass a law to prevent people from moving their capital. I think the whole genius of the internationalization of markets is that it allows that kind of movement to occur. And I think it has done the greatest good for
the greatest number. It has forced the advanced countries to move into areas of much higher value at which they can compete.

As for setting up the institutions, I was hinting at it, I think, by saying that you need the kind of situation we have set up under NAFTA, but it has to be global. You need a dispute settlement mechanism where people can bring an environmental argument or a human rights argument, and it has to be written into the understanding that sanctions are then permitted under that dispute settlement mechanism. I think NAFTA is a model. It is a model which could be used in a hemispheric trade agreement if one ever occurs, and it is a model which I would like to see used more in the WTO.

There is a dispute resolution mechanism in the WTO. In fact, it was the appellate body that made the decision I was talking about earlier on bovine hormones. I think that I would like to see a WTO that acted like NAFTA. That is my answer to your question regarding institutions. I do not know if it is going to happen. That is why I am thinking that setting up a new institution to deal with tradable permits may perforce create a kind of an alternative to the WTO, and may then merge with it. I am looking way ahead there. But, that is what I see coming down the road. I do not think anybody has been talking about that, but that is what I would like to see happen.

QUESTION, MS. WANG: My question relates to standards versus globalization. As globalization continues, and as the changes in the way we do business and the way we live accelerate, also driven by the information flow which in turn is driven by technologies, do you think that the standards, the establishment of standards, and also standardization, are able to synchronize with the pace of the change and the needs? Normally, what we will see in regard to industry or operation is that the standards always lag behind the practice and the needs.

ANSWER, MR. SMITH: Your observation is absolutely correct. The standards do lag behind. I think they always will. They have to, because standards are only based on what people know is possible. Until they see that something else is possible, they do not think about it. They cannot make a standard for something they could not possibly have thought of.

Standards, however, are one way that you can keep control of certain situations. The trouble with the ISO 14,000 standard, for example, is that it is not a performance standard. It is a procedure standard. It is a standard which says your company must go through the following procedures. It is assumed that, by going through those procedures, you probably are going to have better performance. It does not say that you shall emit only so much by way of pollution. It is not a performance standard; it is a procedural standard. The use of standards to protect the environment and the inclusion of those standards into international treaties is clearly what people are trying to do.
There is another role for standards in a global economy, and that is companies and countries have caught on to the fact that he who controls the standard controls the industry. This is something that Canadians did not catch onto, I may say. I used to argue this with various ministers of our government, certainly not Don Macdonald, but some of his colleagues, who failed to appreciate that it was important for us to send our best people to international standards meetings and grab hold of the agenda because, as I say, the person who controls the standards gives his own industry a real leg up in the world. That is another issue for another day, perhaps.

QUESTION, MR. ROBINSON: Stuart, you know I am a lawyer, which means I cannot add. This is a question about numbers that maybe you can help me with. I have heard, in connection with the proposal for the tradable permits, which is a nicer phrase than “pollution rights exchange,” which is really what it is, that the intended economic effects had not really been thought through very thoroughly before we all rushed off to Kyoto to show everyone what wonderful people we are.

I heard the following example, and I would be interested in your comments. Because of the threshold that was set in 1990, and the fact that the Russians can switch to gas from coal for energy much more easily than anybody else on the exchange, the sale of their pollution permits would probably result in the transfer of cash to Russia approximately five times the amount of the current IMF and all the other international financial institutional aid that we are putting into Russia. That is a one-time absolute sale transfer, not a loan, and the Russian economy would be so jump-started that the competitive effects would be staggering, and nobody has thought them through. That is just one country. Now, is there any basis for this? Obviously, this argument came from the U.S. coal industry, and they have done their number crunching. I cannot question their number crunching because I am a lawyer and I cannot add. But you can, so what do you say about that?

ANSWER, MR. SMITH: The issue in the former Soviet Union is not so much whether or not to switch to gas. Why is it that the U.K. can seem so much holier than the rest of us? They switched to gas from coal a while ago. In Germany, they were able to shut down a lot of the polluting plants in the former East Germany, making it look as though they are doing well. But, they did not shut them down because of pollution; they shut them down because they were so damned inefficient. So they have gotten an awful lot of side benefits. The argument with Russia is that, in 1990, they were producing more than they are producing now.

So, if you simply give them credit for that reduction and let them sell that credit, then they could get a lot of money for that credit. But it depends on how you decide to price these credits. There have been folks who jumped the
gun who are starting to exchange credits among themselves at something like $100 a ton of carbon, which is just an example. Most people figure they will ultimately settle out at something less than that. But, in any case, it is hard to know, and you are right, if people are allowed to simply go and meet their obligations purely by making a donation and buying the Soviet misfortune, so to speak, and calling that their contribution, that does not help the planet any. It really is not going to do much other than transfer wealth from one country to another. So, the international trading of these permits has to be carefully defined, and, plainly, Japan and the United States are already over there trying to make bilateral deals with Russia to deal with their Kyoto commitments in that manner. Canada is rather slow off the mark in this regard, I must say.

Canada is hoping to get away with another section of this Kyoto business, which is the growing of trees. If you grow trees, you get credit for taking carbon out of the air. There is a heck of a lot of playing and posturing going on. One of the Order of Canada people I told you about, a young woman, a swimmer as a matter of fact, listened to all of this. First of all, she got really scared that the world is coming to an end. Then, when she heard how the Kyoto horse trading went along, she told us that they are not acting like people who really think there is a serious problem. Instead, nations are acting for their own individual advantage. It was a very naive comment, but dead right.

So, we have not yet reached the stage of global panic with respect to greenhouse gases. We are just talking now about setting up a mechanism which could get us pointed in the right direction so we could start to turn our economies around in the event that the problem is something that we have to take care of later on. That is really what Kyoto is all about. But I agree, if we do not design a system correctly, it could lead to a massive transfer of wealth to people whose only virtue is that their economy collapsed.

QUESTION, MR. WOODS: You mentioned at the beginning of your presentation that there was a concern about the multinationals outstripping, in terms of their scope and reach, the ability of sovereign states to regulate their activity. As I understand the logic, in speaking for the importance of the nation states on trade and environmental issues, you are really still putting the burden on the nation-states to negotiate a framework under which the land and the sea and the things over which they have jurisdiction will be governed in such a way that activities which harm the environment will not be possible. Is that right? The follow-up question to that would be, to what degree do you see the enlightened self-interest of the “clean companies,” the well-managed companies, in the next ten or fifteen years, pushing them to kick in to help the process, rather than to create an adversarial one?
ANSWER, MR. SMITH: The answer to your first point is, you are right, you did understand correctly; that is what I feel nation-states have to do. We have to find a way to work together. We cannot work separately. To what extent will companies pay attention to this? It is still too early to say. The work is still new. There have been three respected papers now, all pointing in the same direction, that the clean companies outperform the dirty companies. But it has only been in certain sectors and there are still about fifty or sixty sectors from which we have not heard. I think it is still too early to say how much effect that is going to have. We do not know.

QUESTION, MR. KIRBY: My question relates to an overhang on Henry’s question about performance and the movement of factories and the threat thereof. We have to deal with something called economic development. If you look around the United States, you will find states like South Carolina that will promise every kind of good deal they can to get a company to come to their state at any cost. They are virtually sinking in foreign direct investment.

Here in Cleveland, we will soon have a French investment house to give us lectures on why we should go to France. What I am talking about is, in Ohio, our governor says that our main concern is jobs, jobs, jobs. We want investment at any cost. And we have an issue here that overhangs the question you are talking about. How do we deal with this question of economic development? Economic developers will try to sell anything they can to get a plant to come to their jurisdiction, and they really do not care much about the environment.

ANSWER, MR. SMITH: The last part of your statement gives me some pause because, up until then, I understood everything you were saying. There is no question that people are out there trying to attract whatever business they can. In fact, I thought the main thrust of your question was going to have an eye toward the zero-sum game, where people are trying to take out of one province or state something that they want to move to their province or state. New Brunswick was accused of doing that vis-à-vis Ontario. People did not get too excited about it because Ontario is so much richer than New Brunswick.

But nonetheless, there was a certain amount of antagonism. This happens in the United States, too. Back and forth across the border, people are trying to attract folks out of Ontario into the Buffalo area and vice-versa. So that is going on, and, to some extent, it is a tug-of-war. Ultimately, all that happens is you get ratcheted down and down and down until the benefits of having those people are just about all given away in advance, or you have to spend so much money to get them that you do not get a return on your investment for quite a long time.
Ultimately, it is not a great policy, but it does happen. Usually, they deny that they are trying to steal from one place to put in another. They are merely trying to "encourage the next plant to relocate." Fair enough, that may, more often than not, be the case. My experience is not great here. What I have seen, however, and my brother-in-law did some of this work years ago, is that the decision of where to locate a plant is far more complex than simply asking, what goodies am I going to be given here or there? A lot of the decision has to do with the employees' quality of life; whether I could get my good managers to go live there; whether they and their husbands or wives want to move there; and so on. It has to do with the education system. Are there enough people around to staff the plant with capable skilled individuals? Those factors tend to weigh far more heavily than a property tax, holiday, free access to the land, or the new road we will put in for you.

Having said that, the game does go on. We know that. I do not think it can be stopped, to tell you the truth. I think, ultimately, the best idea is to build up the education system, the training, and the general infrastructure in the community. That is the best way to attract industry.

As to the point that some people may be easing up on environmental standards as a way of attracting industry, I honestly have not seen that. I watch for it like a hawk. Under the table, who knows what is being said. On top of it, though, I have not seen anything in the way of people racing to the bottom. The race to the bottom which people have predicted is a consequence of this economic development contest. I really have not seen any of that in Canada. Perhaps it happens in the United States, I do not know. I cannot comment about it, since I am not as familiar with the United States. I have not seen a race to the bottom in Canada. I have, however, seen that people have gone easy on the enforcement of standards when threatened with a company leaving. But I have not seen offers to go easy if the company agrees to relocate. If they have done it, it has been under the table.

QUESTION, MR. WISMER: I believe it was President Clinton who came up with the phrase about the United States being the "indispensable nation." You have referred to the fact that the United States is unique in the world in terms of its power, and so on.

You also mentioned the need for a super-agency with respect to the environment, which would require surrendering some sovereignty. This is just a very hypothetical, theoretical question, but, in terms of the march of political history, when might we expect the public consciousness, if you will, of the United States to catch on? I think the administration is well aware of some of these things, but you are dealing with a very complex political environment here, and it is very difficult for politicians to lead too much when they are looking at the polls every day. So there has to be sort of a raising somehow
of public consciousness that some of these things are also in the best interests of the private citizen here, there, and everywhere. I realize this is terribly theoretical, but would we need a catastrophe of some sort or a big depression to do this, or is there hope that it might evolve somehow? Is Joe Public in front of the consciousness?

ANSWER, MR. SMITH: You anticipated my answer. It will take a catastrophe. Until there are catastrophes, I do not believe the public consciousness is going to improve. Sometimes, leaders have to, nonetheless, move a little bit ahead of the public. You cannot move very far ahead of the public, but you start to prepare the road at least. I think, for instance, Vice President Gore is trying to do that. Every now and then, though, he realizes this could hurt his chances of becoming the next president. Then, he backs off a little, but I think his heart is in that direction.

COMMENT, MR. LANGMACK: Dr. Smith, could you please put a little logic into this in reference to the questions that were just asked about public consciousness? All of us from Canada and from the United States who live on the Great Lakes have heard about the Great Lakes Management Plan, which has been in effect now for some years. As a result, Lake Erie, which had been polluted, today is not considered polluted. What has happened is a group of volunteers from the northeastern states and lakeshore provinces have come together. Neither Washington nor Ottawa has been involved. Here are individuals who looked at the situation and said, by God, we have to do something about this. Our lakes were being polluted. That was a catastrophe. By and large, the public in these states and provinces on the lakes have recognized that they had a catastrophe in the making. And they have done something about it. The Great Lakes Management Plan has been a success. Here is a situation where the public has been involved, and there have been volunteers in both the provinces and the states who have come to the floor and have done something meaningful about it.

COMMENT, MR. SMITH: I think it is a great success story. In fairness, there was a role for the federal government as well, but it was driven by the local states, and the public certainly got behind that. They could identify with the idea of Lake Erie dying. I see no reason to argue now that it is too clean, but it is a nice situation to be facing. I think it is a very good point. I think the public sometimes can get ahead of the leaders. But, in fairness, I think the governments did support the public quite strongly in this regard.

COMMENT, MR. YOUNG: I feel that I should at least speak up for corporate America and how we do things. The statement has been made that corporations have a tendency to wield their power and decide to move from country to country, or from state to state, depending upon the enforceability of environmental laws. I will say that that has not been something to which I
have been privy, and I think what you will find, more than corporations just saying that they will not accept environmental standards, whether they are set by the United States, one of the states, or another country, is the fairness of the enforceability or the fairness of the way the U.S. EPA or the state or the country is attempting to enforce its laws. Usually what happens is that the corporation ends up at a standstill in terms of the negotiations because what is being negotiated is, in fact, not fair. And that is usually the time, if at all, when the corporation's senior management decides to take a look at moving. It is not meant as a threat because the standards are too tough, but it is meant as a threat because the way things are being asked to be done are unreasonable. I just felt that I had to say something as a member of corporate America.

QUESTION, MS. IRISH: Just one last question. If your WTO allows environmental reasons as a justification for a trade barrier, does that mean that the environment can become just one more excuse for rich countries to keep poorer countries in marginalized economic situations?

ANSWER, MR. SMITH: Well, that is what the WTO is worried about, and they do not want to see that occur. At the same time, I do not really think the rich countries are trying to protect their markets at the moment. I do not see any evidence that they are trying to protect themselves against the poor countries. What rich countries are trying to do is protect the markets against each other. European protectionism is largely directed at the United States. It is not so much directed at poor countries that can sell them nice, cheap goods. It is really directed to protect some of their very inefficient, but politically important industries like agriculture, as you well know. If we did not want to open our markets, we would not have done it. Nobody forced the United States to open its market, and the United States can close its market anytime it wants. It went willingly into the Uruguay Round; it did not have to be dragged. The United States was leading the charge for opening markets.

I do not think that we are going to see unacceptable standards if the WTO starts to accept certain environmental standards. They might have to accept a lower standard than exists in the cleanest of all countries, but they could at least start to pay some attention to it.

I agree with you. That is what they are worried about. I am not arguing that. I am saying that I think the time has come to start to throw some hints in the other direction and start to move very carefully in the other direction and set a few fundamental standards.