

Plugging the leak on NAFTA myths.

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Although there are many things I would rather write about this month, we are again at a critical policy juncture on the water/trade issue and I find myself of necessity devoting most of this column to water. But first: the good news on Cuba!

THE CUBANS ARE COMING, THE CUBANS ARE COMING

I am MOST pleased to announce that the 1999 Cuba to BC Farmer to Farmer Exchange is "a go!". In August, some 20 or so Cuban farm leaders and accompanying scientific and government representatives will be travelling throughout the province for three weeks visiting BC farms, agri-processing ventures and research and technical facilities. I am now laying out the tour agenda. If you think your farm would be of interest to our visitors, if you can help us identify inexpensive group accomodation in your community or if you would like to help in some other way, please let me know! Next month's column will be full of details... And yes, we are fundraising in earnest for this trip!

PLUGGING THE LEAK: NAFTA AND CANADA'S WATER RESOURCES

In May, federal government bureaucrats met behind closed doors in Ottawa with lawyers for Sun Belt International to discuss the \$350 million (Cdn \$) lawsuit the California company has launched against Canadian taxpayers (you and I) under the investment provisions of the NAFTA.

Similar to the recent trade debate over MMT (for which federal bureaucrats - on behalf of the Canadian taxpayer - shelled out big bucks to US-based Ethyl Corporation in out-of-court settlements), Sun Belt is claiming damages under NAFTA's investor-state dispute mechanism (colloquially referred to as "Chapter Eleven" disputes in trade and investment circles); for profits they say they would have made but for the pesky interference of Canadian government regulations. In the case of gasoline-additive MMT, by a federal ban on imports. In the case of tanker shipments of water, by a provincial ban on exports. Both for environmental reasons. (The fact that MMT is banned for use in a number of American states and that the Harmon Doctrine stripped Mexico of its rights to US water some 100 years ago is interesting but irrelevant...)

Back in the spring of 1991, Snow Cap's application to draw 15,000 acre feet of water from Toba Inlet on Vancouver Island was in the final stages of approval when California's Goleta Water District awarded Snow Cap the contract to ship \$105 million (US\$) of water a year to their tiny coastal town. Some five days later, the provincial government placed a moratorium on the issuance of any further licenses. Snow Cap was shut out of the market. The BC government settled with Snow Cap. Absent NAFTA, end of story.

But in a post-NAFTA world, new rights have been created. And so the feds and the lawyers for Sun Belt sat down last week to discuss Sun Belt's Chapter 11 claim against Canadian taxpayers for profits they say they would have made had they gone into the water export/import business with BC-based Snow Cap as originally planned.

And BC's lawyers were not permitted IN THE ROOM, never mind at the table. This is a very dangerous situation we have here... The way this issue is handled from here forward is going to shape the future of water use in this country for the rest of history.

(Only last week, on the final day of last week's annual western premiers conference in DRUMHELLER, Alta., North Dakota Gov. Ed Schaefer - representing the Western Governors Association - spoke of the need for cross-border diversions of Canadian water to parched regions of the northern plains...)

Because water is critical to farming, a few points to remember over the next several months as an antidote to the bullshit (as an Agrologist I share with farmers the right to public use of that technical term...) which will inevitably be spread around on this issue:

MYTH #1: "WE CAN'T BAN WATER EXPORTS BECAUSE THIS WOULD ACKNOWLEDGE WATER IS A COMMODITY SUBJECT TO NAFTA."

Circular and disingenuous. NAFTA's jurisdiction over our water resources needs no "acknowledgment" by Canada. Water is a good under the NAFTA because — unlike raw logs and unprocessed fish from the Maritimes — water is not mentioned in NAFTA's Annex 301.3 (Exceptions). In effect, what NAFTA has done is pasted bright red "only for use on raw logs and unprocessed fish from the Maritimes and Quebec" stickers all over Canada's "Export Restrictions" policy tool (in this case, a federal ban on bulk water withdrawals for export purposes).

(What a water export ban *would* do is make Canada vulnerable to a trade challenge by the Americans. Which — as presently written; without an exemption for water in other than bottled form — we would clearly lose. This is why the federal government is instead calling instead for a voluntary ban by each of the Provinces till this matter is resolved. Which they won't get.)

MYTH #2: "AMERICAN ACCESS TO CANADA'S WATER UNDER NAFTA IS NOT 'TRIGGERED' UNTIL THE FIRST EXPORT HAPPENS."

That ship has sailed; whether in bottles, trucks, tankers or rivers, water is a good already moving in international commerce between the two countries. And just because we don't mention it much doesn't mean that the US isn't quite ready when the time comes to point to precedence such as:

- √ the tanker truckloads of Okanagan groundwater that cross the international border every day on their way to Clearly Canadian's US-based bottling plant;
- √ the long term sale of municipal water by White Rock to Point Roberts; and
- √ the large bulk sales of water to Bonneville Power by BC Hydro in the early 1990's; Columbia River water (not power) captured and sold by Canadians for the benefit of Americans above and beyond any international obligations Canada had under the Columbia Treaty (ongoing);

But that is not the point. NAFTA's jurisdiction over water needs no "triggers" and would exist even if there had been no exports. The fallacy in this statement becomes evident when one looks at its corollary: as long as we don't allow exports, we are safe. Very dangerous error to leave in the minds of Canadians. The last person who tried it was John Crosbie....

MYTH #3: "CANADA SHOULD SHARE ITS WATER."

To suggest that Canada has some sort of moral or humanitarian obligation to take water from our lakes and rivers and export it to water deficient regions because we must "share" in the face of a looming water crisis is akin to saying that Canada should export topsoil to enrich the badly depleted soils of near and distant growing regions so that unsustainable farming practices and unsustainable food distribution patterns can be continued. What we should be doing in both cases is foster the development and adoption of sustainable technology.

THE ANSWER

There are four urgent priorities on the water/trade issue:

- #1 full transparency in the federal government's dealings with Sun Belt, including BC's right to have its lawyers at the table;
- #2 a federal ban on all bulk water exports until such time as a federal water policy framework (legislation) is put in place ensuring any water export schemes pursued at the provincial level follow Dr. Tony Scott's three rules: short term (max 5 years), small quantity (e.g, tankers) and fully terminable or renewable at Canada's option; and
- #3 *COINCIDENT WITH IMPOSITION OF AN EXPORT BAN*, a formal announcement to our NAFTA partners that we are seeking an explicit exemption for water in other than bottled form, failing which we have no option but to announce our intent to withdraw from the deal. (This would be accomplished through an amendment to the NAFTA adding water under Annex 301.3, Exceptions to Articles 301 and 309 Section A - Canadian Measures and providing equivalent security with respect to investments and services.)
- #4 A similar exemption for water must also be obtained at WTO/FTAA tables.

In the minds of some, this hard-ball approach gives rise to Myth 4:

MYTH #4: "THREATENING PULL OUT FROM NAFTA IS TOO DANGEROUS."

Horsefeathers! It's just hardball. And if negotiated correctly, there is no reason to suppose that Canada would have to pull out... American stock exchanges would go into shock at the prospect of losing continued preferential access to Canada's markets and - more importantly - her resources. When push comes to shove, the Americans would have little choice but to opt for the get the goodies "on the table" rather than what was promised "under the table"; we'd have the exemption for water in other than bottled form and NAFTA would remain intact. And Canadians would once again have demonstrated international stewardship and statesmanship; the Canadian difference.

SUSTAINABLE PRIORITIES

Just as our response to the looming water crisis should be one of conservation technology, not raw exports, so too should our response to the growing food crisis (conversion of farmland to other uses, loss of topsoil/depletion of soil fertility, soil salinization, chemical residue buildups) be one of support for sustainable farming practices. Which, in turn, require sustainable economic support for farmers. This is what the BC-Cuba Farmer to Farmer Project is all about.

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