

## Surprise: Bush Administration Joins Anti-Nafta Movement!

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Last week, having lost its case at the Extraordinary Challenge Committee (an official tribunal established as part of Nafta's dispute resolution process), the Bush Administration slapped Canada in the face and appeared to abrogate its obligations under Nafta when it asserted that, after years of litigation over alleged Canadian subsidization of timber sales into the US, it now preferred a "negotiated solution" to the controversy. Understandably, the Canadians are upset, since the US has forced their timber exporters to pay \$5 billion in extra import duties while the controversy has wound its way through the official Nafta dispute resolution mechanism of high level consultations, bi-national review panels and a presumably final appeal to the Extraordinary Challenge Committee.

Reasonable people can disagree over whether or not trade agreements like Nafta and Cafta are sensible foreign policy commitments (see [The Problem\(s\) with Cafta at http://www.kentlaw.edu/international/Stories/Cafta.pdf](http://www.kentlaw.edu/international/Stories/Cafta.pdf) ), but it is the height of hypocrisy to sign onto bilateral and regional trade agreements that explicitly spell out how disputes are to be resolved and then to assert that a diplomatic solution is preferable to "resorting to litigation" when we lose in the special tribunals established under the agreements. The Canadians rightly stated that the Bush Administration position raised serious and fundamental questions about our commitment to Nafta, and they appropriately noted that at this point the issue is not about establishing rules but about abiding by rules we have committed to in binding agreements. (<http://www.ens-newswire.com/ens/aug2005/2005-08-12-04.asp> )

**The basic political, legal and moral question is whether the Bush Administration believes that the rule of law applies to the United States.** We have spent many years, not to mention many taxpayer dollars, pursuing our case against Canadian softwood lumber imports. To turn our back on the process at the end of the game is to not only thumb our nose at our closest and most important trading partner (trade in goods and services between the US and Canada is worth over \$1.8 billion per day), but also to signal to the world that we will pick and choose which rule(s) of law we will abide by and which we will abrogate.

In the last half century the nations of the world, led by the United States, deliberately created increasingly legalistic mechanisms for resolving trade disputes. We did this as an evolutionary improvement over failed diplomacy and the risks of immoderate trade wars. In the absence of a global judicial system, we believed that by establishing international dispute resolution processes that mimicked domestic judicial mechanisms (albeit imperfectly), we were creating a reasonably reliable global dispute resolution system that would minimize the risks to businesses wanting to invest and operate internationally. To be sure, many people have serious questions about the development of international economic law that appears to be crafted by and for the benefit of an unaccountable transnational elite – but who knew that George Bush would join their ranks?

There is an argument to be made that the ad hoc tribunal system established under Nafta is fundamentally flawed – indeed I have made that case (see eg *NAFTA: Structural Damage to the Ship of State?* 2001 Employment Law Update, edited by Henry H. Perritt, published by Aspen Publishers, Inc.) – and if the Bush Administration has decided that Nafta is not a good agreement for the US to be part of, then there are provisions for our orderly withdrawal from the pact. But we must honor our commitments and pay back the \$5 billion in duties we have unfairly exacted from our Canadian neighbors.

- Lydia Lazar