Using NAFTA to open the border is a “slam dunk”

Farmers Independent Weekly, September 25, 2003, Page 4,
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“It’s a Slam Dunk…!” As he says it, Michael Woods leans forward in his chair, bringing his elbows to rest on the conference table. We are in the 11th floor offices of Gottlieb & Pearson, experts in international trade law.

Through the window behind him, Montreal’s glass and concrete architecture reflects the long rays of the afternoon sun.

I’d asked for the meeting to get Woods’ views on the trade law implications of the continued (75%) closure of the US border to Canadian beef.

As an Agrologist, I have been arguing for a swift NAFTA defense of Canada’s ranchers since mid-July. The meeting provides important confirmation for those who need to hear it from a lawyers lips: respected international trade lawyer Michael Woods is unequivocal: using NAFTA to open the US border to Canadian beef is a “slam dunk”.

Yet despite the clarity of this issue, the border remains mostly closed. And the politicians remain mostly silent.

“What I don’t get”, Woods says, leaning into his elbows across the conference table at the end of the meeting, “is why Canada’s ranchers are putting up with it.”

I don’t really have a ready answer for that one…

Perhaps the best response is that no one understands NAFTA well enough to argue back when Ottawa says “we’re doing all we can”… But in their defense, Canada’s ranchers shouldn’t have to become experts in international trade law. Mounting an appropriate trade defense is the responsibility of government.

If the feds are stalling, the provinces should be showing them the way. Why aren’t they? Because the spin-doctors have spun this so much the facts are unrecognizable, and webs of disinformation blanket our provincial politicians.

BC Agriculture Minister John vanDongen was told by Ottawa that the US border closure is justified by an agreement beef importing nations entered into some years back (following the UK BSE fiasco) to impose 7 year trade bans against any BSE-positive country. Ontario Agriculture Minister Helen Johns was apparently told the same thing. Judging from public statements he’s made, so too was Alberta’s Ralph Klein. One can only assume this has been a Canada-wide communiqué, spun in both official languages.

Problem is, it’s dead wrong. The 7-year agreement was based on “precautionary principle” - a concept that didn’t (despite the efforts of Canada’s environmental community) make it into the NAFTA. NAFTA requires sound science and risk assessment for any trade restrictive measures and wields big sticks for non-compliance.

On the assumption that good information in the hands of farmers and the public will evoke the defense Canada’s ranchers deserve, here for the record are the points made by Gottlieb & Pearson’s Michael Woods during our Montreal meeting and in his follow-up letter:

"There is a strong prima facie case to be made that the U.S. ban is a violation of Canada's rights under both the NAFTA and the WTO…. Concerns that Canada's imports would harm access to Japan (and other markets) for U.S.-origin beef is not a valid defense.

"Based on publicly available material, including statements by the U.S. Secretary of Agriculture that the Canadian beef does not present any risk to consumers, and based on Canada's actions to address the matter, in the context of internationally accepted practices, Canada and/or Canadian suppliers of beef have a strong prima facie case."

"In the alternative, Canada should consider closing its borders to U.S. and (other) imports to protect its new, more stringent BSE-related rules introduced this summer. …Canada should not be in the innocuous position of having higher BSE-related standards than the U.S. while not having reciprocal access to its market."

"In the current BSE-related context, a Canadian entity with an investment in the US (or Mexico) whose investment is expropriated as a result if the US ban has the right to seek compensation equal to the fair market value of the investment. Chapter 11 arbitration panels have determined that access to another NAFTA party's market can be considered property interest. …there have been a number of these cases and the awards can be significant."

Call or email me for a copy of Michael Woods' letter. Send it or this column to your beef industry leaders, provincial politicians and local MLA's. Tell the media to call me for details.

Fair's fair. It's time to stand up for Canada's farmers. Or there won't be any farmers left.

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FARMERS' RESOLUTION TO EXEMPT WATER FROM THE NAFTA

I will be speaking in Saskatoon Lake Hall, Alberta on October 15th and in Dawson Creek on October 16th on The Farmers' Resolution to Exempt Water from the NAFTA and Using NAFTA to Open the Border to Canadian Beef. Update on this next month!

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TIME TO BOOK FOR CUBA.

Bookings close by December 1stso call me NOW to guarantee your seat. With our strong Canadian dollar, this two-week tour has never been more affordable… Cuba is ahead of Canada in some areas, Canada is ahead of Cuba in others. Come and see what 250 Canadian farmers before you are talking about and help lay the path for strategic collaboration. Described as "the trip of a lifetime", it's deductible too! But hurry…

NEXT MONTH: SAD COWS – Saputo closes 101-year-old Armstrong Dairy.

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