



DID THE WHITE HOUSE JUST SIDE WITH CANADA?

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We have become inured to the disdain of the Trump White House for international treaties and agreements as it wages trade wars against the world. Tariffs have been applied willy-nilly, contrary to fundamental rules of the World Trade Organization, resulting in global chaos and supplychain unpredictability as we try to figure out the latest twists and turns in U.S. trade policy.

Yet, late last month, something happened that seems peculiarly at odds with all this. In a formal legal document, the Trump administration actually accepted its treaty obligations toward Canada. It happened in the Line 5 pipeline dispute, a case that's been raging for years between Enbridge Inc. and the state of Michigan, and one that carries huge economic significance for Canada. There is at least some prospect that Mr. Trump's newfound respect for international law could carry over into the renegotiation of the Canada-United States-Mexico Agreement (USMCA), set to begin next year.

Line 5 has been a huge bilateral problem for years because of Michigan's concerns about the safety of the pipeline running under the Mackinac Strait. It came to a head in 2020 when Michigan Governor Gretchen Whitmer announced her intention to revoke Enbridge's 1953 easement for the pipeline under the strait, citing Enbridge's "persistent and incurable violations of the easement's terms and conditions" related to safety and maintenance.

Blocking Line 5 would have untold economic consequences for Canada, as the pipeline transports almost all the oil and gas sent from Alberta to eastern Canada. It also delivers product to many parts of the American Midwest.

Enbridge filed a lawsuit against Michigan, arguing that the state has no basis for cancelling the easement, underscoring that the company has gone above and beyond taking all necessary steps to secure the line against leakage. It launched a replacement line project years back, approved by the Michigan Public Services Commission and the Michigan appeals court. But then the Whitmer government refused final approval on environmental grounds.

While there are many legal technicalities involved, when it comes down to it, the central factor in the dispute is the 1977 Canada-United States Pipelines Treaty, one that guarantees unimpeded pipeline transit from Alberta to Ontario through the U.S., ratified by the U.S. government after getting Senate approval. The treaty was originally pushed in the 1970s by the U.S. government itself because it wanted assurances of unimpeded oil transit from Alaska, along a possible route to a U.S. port through Canada without interference from British Columbia.

Supporting Enbridge in its case against Michigan, the Canadian government filed an intervenor brief in court arguing that the 1977 treaty is binding on the U.S. and overrides Michigan's attempts at interference. Where was the U.S. federal government in all this?

The Biden administration kept on the sidelines to placate various American political interests. But, last month, confounding all predictions, the Trump administration stepped in and, in doing so, underscored the legally binding force of the pipeline treaty.

In its 33-page submission to the U.S. District Court on Sept. 19, the Justice Department said Michigan is attempting to override federal authority on interstate pipeline regulation and in foreign affairs because the U.S. is subject to its legal obligations under the 1977 treaty.

The federal submission directly confirms American obligations under the 1977 treaty, stating that the U.S. could be exposed to liability if found in breach of the treaty, and that therefore, there is a “significant public interest” in avoiding a bilateral dispute with Canada over Michigan’s conduct.

Given Trump’s record, it still is hard to believe this has anything to do with some late-discovered respect for international law or for ratified American treaties. Rather, this seems to be more about MAGA politics and Mr. Trump’s attacks on Democratic governors around the country. Perhaps as significant is the influence of big oil.

Even so, one cannot dismiss the fact that the Trump administration has recognized in a legal filing that the U.S. is bound by a treaty with Canada. Without being naive, maybe this position could have some spillover effect on the USMCA negotiations. While it is risky to overstate this or find solace in some newly expressed support for international agreements, the fact that the White House has stated in a court filing that the U.S. is treaty-bound cannot to be totally discounted. It offers Canada at least some political leverage in dealing with an unpredictable adversary in the impending USMCA battles. It may be modest leverage – but with this White House crowd, every bit helps.
