

Testimony of Senator Angus S. King, Jr.

Hearing on Antidumping and Countervailing Duty Investigations No. 731-TA-1382 and No. 701-TA-584, *Uncoated Groundwood Paper from Canada*

U.S. International Trade Commission

July 17, 2018

Paris, January 16, 1787 - Thomas Jefferson to Edward Carrington: "The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

One of the essential qualities of our country is the Freedom of the Press. The press is the only industry in America with its own line in the Constitution and the 1st Amendment; and what you're considering today is a very unusual case that brings into conflict two principles that are important to the establishment of the country. One is, you have to obey the law; and the law is in regards to tariffs. But the other principle is the 1st Amendment; and I would argue that these two principles run into one another. They are in conflict. This is a special case. The 1st Amendment says, "Congress shall make no law abridging the freedom of speech or the press."

Recently – the Bangor Daily News, one of the great papers in our state, announced that their response to the increase in newsprint prices brought about by these tariffs is to reduce the size of the newspaper in September by an inch. That's an inch loss multiplied by millions across the country – an inch loss in information. It could also lead to layoffs and closures of newspapers, particularly in rural areas where the internet either doesn't reach or is inaccessible to our citizens, particularly the elderly.

The irony of this case from an economic point of view, forgetting about the 1st Amendment, is that by increasing this cost, as my colleague Senator Collins testified, the net result in the end will be to diminish the market for newsprint in America which will hurt the very industry that this petition is designed to help. If you end up with a smaller market, you haven't helped anybody, let alone the plant in Washington that is petitioning for this help. Now, what is the way out for you? I've thought a lot about that - and I've read your statute because it appears to be mandatory: "you shall find if the information is there; and there is no provision for weighing the public interest." I would argue that there is a way out, and the way out is the ancient concept of prosecutorial discretion. You do not have to prosecute. The law says, "thou shalt not kill" or "thou shalt not steal," but prosecutors, which you are in this case, have discretion whether to apply that law in a situation where it makes no sense; and in this case, it makes no sense both because it would hurt the industry it's designed to help, and it would be an arrow in the heart of the 1st Amendment because it would reduce the information that's available to Americans.

So I don't think you have to do this. Throughout our law and throughout our history we've tried to avoid having the law not make sense. I had a professor in Law School who used to say, "the law is only successful if it's written in the hearts of the people." That means it has to make sense. Dickens in *Oliver Twist* put it somewhat more simply. He said, "in Hell, there is nothing but the law, and due process is observed meticulously." The other place in *Oliver Twist* is where Mr. Bumble says, "the law, sir, is an ass - an idiot." And he was talking about a nonsensical application of the law. And I think that is exactly what we have in this case.

I also want to conclude by thanking my colleague, Senator Collins, for raising this issue in the Congress. But I don't think you have to wait for a Congressional solution. I think you can find, as a matter of constitutional law, and also as a matter of your own statutory mandate to protect the industry that is seeking this help, that the cure would be worse than the disease, that the impact on the industry at large would be negative, but most importantly, the impact on the ability of Americans to know and understand the information upon which their decisions are made for the good of this country would be significantly and measurably impaired. Remember that newspaper that will be an inch smaller in September. Thank you.