Canada-United States Law Journal

Volume 1 | Issue Article 16

1978

Discussion

Discussion

Chairman: *Thomas Drucker*
Animateur: *Hugh M. Kindred*
Rapporteur: *William Biggs*

Chairman Thomas Drucker

I have considered, in advance, whether we could structure our discussion in any particular manner, but since we are dealing with such a wide variety of cases, I believe it would be inappropriate to impose any Procrustean beds on the flow of the discussion. In England, it is sometimes said that graduates of Cambridge talk with a view to coming to a definite conclusion at the end of the discussion, whereas those of Oxford merely practice the art of conversation. I hope we will have elements of both the utilitarian and the brilliant in our discussion. I also hope that our American friends will give some of their perceptions of the trade and investment issues affecting United States interests in Canada, as well as Canadian interests in the United States.

Senator George van Roggen

From my perspective, Bill C-58 verges upon a classic example of how not to go about dispute settlement in Canadian-American relations. First, I would like to make the point that some people seem to believe that the American President calls in his cabinet and says to them: "These nasty Canadians have just gone too far today. What can we do to retaliate?" Well, in my judgment, that never happens and does not need to happen. Retaliation is certainly not something that is carefully planned.

I spoke very critically of Bill C-58 in the Senate, and I take back nothing of what I said. I prefaced my remarks with a statement that I was completely sympathetic to the problem of communications overflow or fall-over on the border. A serious problem exists when two hundred million people have a fall-over at the forty-ninth parallel. We have to make arrangements. But, in my judgment, Bill C-58 dealt with only a part of the problem.

The C.R.T.C. prepared a paper on the problem in which it presented, as a partial solution, the tax requirement which became Bill C-58, plus the cablevision commercial deletion. The two had to go together. The Canadian Government should have insisted we negotiate a solution to a wide-ranging problem that could not be handled with merely a tax act.

I think overtures should be made to the American Government. It is an unfortunate situation where a serious problem exists in Canada which was not foreseen by the United States. However, it is still my judgment that we should have brought more pressure to bear on the Americans to come to the negotiating table. This is what communication is about. Instead of that, we decided to act unilaterally. We designed Bill C-58, which is, in itself, simply a mandate in amendment to our tax bill. Therefore, it could not be objected to by the Americans in any way whatsoever. It seems we did not anticipate

the very high level of concern that was going to develop in the United States because of the Bill.

Section 602 of the Convention Tax Act was not retaliation. It had been worked on by various legislators for five or six years, and it was not directed at Canada or Mexico. It was directed at the Canadian or American medical associations which were taking free trips to the Aegean Islands or the Bahamas. It became evident, some time after the passage of the Act, that it was of serious concern to Canada and Mexico. The Goldwater Amendment would have exempted Canada and Mexico, which was fair and proper because we are part of the North American convention scene. If it had not been for Bill C-58, which was specifically mentioned as a main arguing point in the Senate, by Kennedy and others, the Goldwater Amendment would have been passed without question. As it turned out, it was only defeated by three votes.

Section 602 has had a great effect upon Canada. Figures given in the news show a seventy-five million dollar impact on us in the first six months of the year. Conventions are planned a year or two in advance. I have had figures given to me as high as 200 million dollars that we have suffered already. If you look at the future conventions list, the figures go even higher. So it was pure law and order, but we are two hundred million dollars out.

M. D. Copithorne

I think the paper has been an extremely useful compendium of a number of incidents and problems in the area. Our overall objective, as I understand it, is to look at mechanisms that have or might have been used in judicial cases, and attempt to synthesize them so that we may learn how disputes are to be prevented or settled. In cases where issues reach a fairly pronounced stage, direct consultation and negotiation can be successful. As we have seen, however, some of these disputes have not been resolved by this mechanism. This may be due to the nature of the problem, the nature of the two personalities involved or the nature of the political context in which the dispute arises. A major question is whether it is really worthwhile to attempt a broad brush approach to the problem of dispute settlement. Would it be better to attempt to build a dispute settlement mechanism into each area?

One approach I suggest would be to take one of these areas and, particularly if there is a constitutive instrument, build into that instrument some form of dispute settlement process. This need not be a very formal type of instrument. It could, at least in theory, be an understanding between the two governments that a particular situation should prevail for the coming year. If that is unsatisfactory, the two sides automatically agree that it will be referred to a predetermined form of dispute settlement mechanism.

This seems to be in line with the suggestions we heard about the pragmatic approach. It may well be the one in keeping with the traditions of the Canada-United States dialogue or relationship. It should commend itself to us in this area because we are dealing with a mix between the multilateral and the bilateral. Sometimes, issues which are normally multilateral are, in

effect, bilateral in nature. The cutting edge, at least, is bilateral, and sometimes the converse is also true. Therefore, the title or form of a particular problem may be misleading, in this sense.

I would also like to make a brief comment about the Sovereign Immunities Act of 1977. It is my understanding this act has had a profound impact on the granting of sovereign immunity in a United States court. On the other hand, I do not think it is a radical departure from the policy that has been pursued in the United States, at least since the Tate Letter in 1952. The United States has had a restrictive sovereign immunity policy. Indeed, most other countries have a similar policy, except for Canada, where a Supreme Court case gave a more traditional, absolutist approach to sovereignty.

The final subject I would like to mention deals with the Rio Algoma subpoena case which arose out of the uranium dispute. Last week, the Court of Appeals held that the uranium information security regulations were a valid exercise in Canadian sovereignty. Since it would have reqired persons in Canada to violate those regulations in order to comply with the subpoena, the court overruled the contempt citation against the Rio Algoma officers. In other words, the court clearly held that the "foreign compulsion" defense was sufficient, in this particular case, to defeat a contempt citation arising out of a failure to produce documents. The whole area of the extraterritorial application of antitrust laws, and the acts of states being a form of compulsion, is a very complex one. It is one that received a good airing in London not so very long ago, and is perhaps something we can look forward to discussing in a little more detail at a future session of this Council.

Sidney Picker, Jr.

In attempting to explore fresh approaches to the various economic disputes listed by Messrs. Kindred and Biggs, it may be helpful to re-examine the purpose and effect of the various unilateral actions taken by each country which gave rise to the disputes. I suspect that there are essentially three types of unilateral actions:

First, there are actions primarily designed to control strictly national interests but which, in individual cases, have extraterritorial consequences impacting upon the other country's sovereignty in some form or other. Examples are the United States Trading with the Enemy Act, or antitrust legislation, both of which are designed principally to implement American national interest, but in isolated fact situations, the American legislation has been applied to Canadian nationals or to activities taking place in Canadian territory. In this first group of disputes, the drafters of the offending legislation may not have foreseen the nature and extent of the conflict with the other country's policies that such legislation may create. Only later implementation of such legislation in individual disputes raised the issues. In short, by the time the extraterritorial problem was identified, the dispute was already being resolved by the administrative or judicial arm of one of the two countries, without machinery for consultation with the other country.

A second group of actions either the United States or Canada has taken may be distinguished from the first when such actions are primarily designed to make the behavior of the other country or its nationals conform to national policy. Examples here would include Canadian Bill C-58 or the Canadian Foreign Investment Review Act. The drafters of the Canadian legislation in question know in advance that the unilateral action contemplated will have a substantial effect in the United States. Any resulting conflict can therefore be anticipated, but the implementing country has already made the decision that any such conflict is a satisfactory price to pay in order to accomplish the objects and purposes of the action in question.

The third group of actions is in some respects an amalgam of the first two. The United States or Canada may adopt a scheme of behavior which is viewed as essentially global in nature without necessarily anticipating the extent of the impact on the other country. Examples of behavior falling in this category would include the American withdrawal of tax deductions for business conferences attended outside the United States (global in scope but impacting more substantially on Canada than any other country), implementation of the import surcharge, or the adoption of DISC. In these cases, the United States anticipated global response to its actions because such actions were designed to affect the behavior of foreign governments or individuals, but it did not anticipate the nature of the scope of the Canadian response.

M. D. Copithorne

The import surcharges were basically directed at the European countries.

Sidney Picker, Jr.

That is precisely my point. In adopting the surcharge, the United States anticipated European reaction, but apparently it did not adequately realize that the impact on Canadian exports would be so extensive. It was therefore unprepared for the Canadian criticism which requested a special approach for Canada in recognition of its unique economic relationship with the United States.

Perhaps in this third category of action, the two countries might set up new, or improve existing, dispute avoidance machinery to educate the country proposing global action. Then, prior to the implementation of any unilateral action, each country could more realistically anticipate the effects of such action in the other country. For example, the United States limitation on business travel deductions, as mentioned earlier, impacted most severely on Canada. Only after such legislation was adopted and implemented did the United States realize that most foreign conferences attended by Americans were held in Canada, and that Canada was therefore the foreign country most affected. By then, however, Canada and the United States were making bilateral representations within a dispute settlement context, (if one can call such discussions dispute settlement), which is inherently confrontation oriented. Had discussions taken place before the legislation was adopted, they

would have been dispute avoidance oriented, without acrimonious confrontation, and therefore more fruitfull within a consultative context.

Perhaps similar dispute avoidance consultative machinery could be used for the first category of actions which I listed, where the objective is to control national interests. Consultation prior to adoption, in some cases, may lead to modifications of the proposed actions, thus minimizing the number of disputes which may later arise in given fact situations.

I suspect, however, that in the second category of actions which I listed, where the object and purpose of the action is to alter behavior in some manner in the other country, dispute avoidance machinery would be of little value, for in this case the implementing country fully intends to produce the effect it is legislating to control.

M. D. Copithorne.

The fact is that all Canadian action contemplates a substantial effect with United States relations. The fact is that Canada is always overshadowed by big brother the United States.

Sidney Picker, Jr.

If that is so, then only the United States, and not Canada, would need consultative machinery to avoid accidental, rather than incidental, effects in the other country. Nevertheless, even in the second category of cases, Canada may find that greater use of dispute avoidance channels would give it a more accurate reading of probable United States responses to proposed Canadian actions. For example, when Canada modified the television commercial requirements, it clearly anticipated an effect in the United States, but apparently Canada did not realize the extent of the American response. That is just misreading. If Canada wishes to have such a policy, Canada is entitled to adopt and implement it notwithstanding any response in the United States, but because it can anticipate a response, it should at least have the best possible information available to avoid surprise at the later nature or extent of such response. The point is that even in this second category of actions, where disputes cannot be avoided, they can at least be accurately assessed through a better flow of information prior to implementation.

M. D. Copithorne

I think we should take the Senator's comment one step further and say there is a danger that each one of these issues is related to another issue in such a way that it may not lend itself to identification and solution on its own merits. What does that say to lawyers? Does that mean you do not have a clearly severable package, within which you can determine the facts or apply precept norms, or does it say to lawyers that you can generalize dispute settlement procedure?

Robert Buchan

I think this question of linkages is important, and perhaps it would be useful to examine this a little bit further. In managing the relationship between Canada and the United States, there is currently a policy of separating issues as much as possible. But, in a lot of these things, there is unnecessarily a linkage. The convention expenses deduction issue links back to Bill C-58. In 1971, when the package of Nixon economic proposals came out, there was a wide variety of proposals and policies on the table. Canadian policymakers were continually conscious of this and eternally referring to the Auto Pact. The Pact determined much of the thinking in response to most American initiatives. Always present was the question of what might be done with regard to the Auto Pact, which the other side contended was of a transitional nature. Canadian policymakers were terribly aware that if it was deemed to be transitional and was terminated, it could do a great deal of damage to the Canadian economy. It was the sword that hung over the Canadian response to many questions, apparently on unrelated initiatives in other areas, but primarily in the economic area.

From a Canadian point of view, there was an unfortunate development in the mid-1970's, when an agreement to treat issues on an issue-by-issue basis was reached. One of the areas where, quite happily, this policy was followed by the American Government, was in regard to the communications issues: commercial deletion and Bill C-58. Commercial deletion, as a policy of C.R.T.C., was not a formal policy of the Canadian Government. It was a policy of the independent, quasi-judicial administrative tribunal. It was never approved by the Parliament of Canada. It was imposed pursuant to the perceived powers of that independent tribunal, and I think it may be fair to say it was something of an embarrassment to many people within the Government, and to many Canadians, generally. However, because of the independent nature of the Commission, it was difficult to know exactly how to deal with that problem. Bill C-58, of course, was governmental policy. It was internal domestic tax legislation inextricably linked to the deletion policy of the C.R.T.C. Those two issues were linked, but I think it was to the Americans' credit that they did not threaten to retaliate in other areas.

Everyone working in this area is conscious of linkages. Now, it has led to an inevitable linkage because of the parallel nature of the effect of the convention expenses deduction legislation. I think this excellent paper we have before us, and the discussion this morning, would benefit by an expansion of the discussion of linkages. If we are looking toward proposed mechanisms for resolution of bilateral disputes, I would hope, as a lawyer, that those legal issues would be treated on an issue-by-issue basis as much as possible, and that any machinery which might be proposed would include safeguards against linkages. I realize there are those who see political and legal issues as forming some kind of a continuum and are inseparable. But, as a lawyer, I would prefer to see it treated on an issue-by-issue basis. Separating them in such a fashion tends to benefit, on balance, the smaller partner in the kind relationship Canada has with the United States.

John W. Holmes

I entirely agree with the good sense of that comment, but I have some questions. I wonder if the problem is that linkages are human? I do not know whether you can take it into consideration. Somehow, the Senator made the sequence of events a little too automatic. I do not know that we could perceive exactly what would happen in each case. On the whole, we are better off if we have reasonably good will in the United States Congress and in the administration, because decisions there are taken by human beings.

Part of the problem is that the United States never achieved responsible government. We did a long time ago. It is not a question of Canadians having a conspiratorial nature or of the executive of the administration saying: "If you do that, we will do this." Rather, it is a matter of people in Congress being annoyed in October because of something the Canadians did in September. It is on that level that the problem exists, and I do not know how controllable it is. It is a good idea to do what you can to avoid linkages, particularly from one area into another, but whether this can be achieved remains to be seen.

Stanislas Slosar

I would like to add something on the same subject. I understand representations are regularly made by one government to the other, but I believe there should be more interaction on other levels of government. For example, there should be some kind of cooperation between Parliament and Congress, or even a simple exchange of documents. Furthermore, lobbying by American companies and the Canadian Embassy, through hired agents, is highly efficient compared to lobbying efforts made by governments.

M. D. Copithorne

The question of doing in Washington as others do, rather than as you would do in Ottawa, is one that has been with us for a long time. Senator van Roggen's committee, in the first volume of their report published in January, 1976, identified what was considered a weakness in terms of the Government's relationship with Congress, as distinguished from the relationship with the executive branch of the United States Government. How much more effort need be made in attempting to communicate with Congress? I think the Department of External Affairs is well aware, indeed, of the need for more.

There are, of course, many incidentals. There is always the rubric, I suppose, that diplomats are brought up to respect the concept of noninterference in the internal affairs of another country. That is, perhaps, one reason why we, who are accustomed to the parliamentary system, find it a bit strange when we operate in an environment such as Washington. However, the fact remains that at some points in history we have been more successful in terms of a relationship with Congress. And that is a function of many things. It is a function of personalities, issues and the general political climate between the two countries. Obviously, for example, in time of war or perceived external

threat to the continent as a whole, these relations are usually much easier than they are when times are easier, in which we tend to look at the smaller problems.

I would like to say one other thing about linkages. Linkages are not always a bad thing. We have found, particularly in the context of the maritime boundaries and fishery matters, that they are virtually incapable of settlement unless they are linked. This is because, from the point of view of one side, it is a question of deciding fisheries matters only after you have settled your boundaries, while the perception of the other side is that it is a matter of settling your fisheries first, and then your boundaries. Therefore, you reach a common denominator in that the two must go hand in hand. The conclusion to be drawn from that sort of experience is, I suppose, that there are some issues which, by their nature, are so interrelated that they can form a manageable package together. Consequently, I would say, as a cautionary note, that linkages are not necessarily to be avoided.

Barry Campbell

Last year, I conducted some research on the United States antitrust laws which may be of interest. I interviewed various Canadians and Americans who had participated in antitrust disputes over the years. Linkages was an issue that came up several times in the course of these interviews. First, I addressed the following question to the participants: "As you are negotiating, do you keep in mind how things worked out the last time you got in touch with each other over the dispute?" In every instance, the answer was a categorical "No." Following this reply, I asked: "Could you relate to me who won and lost in each contact?" Each respondent then rattled off the wins and losses, indicating they were definitely aware, at each time they went into the process, what the score was. That is one point I wanted to make, which is solely within the antitrust context.

The other point, which was made earlier, is that people are only human. It came out, in our discussions, that the status of Canadian-American relations was always in the background of a particular contact. It is impossible to avoid keeping in mind, or having in the back of your mind, that things have not been going well in one area or that things have been going well in another. Participants in the antitrust obligation consultation procedure admitted that this was unavoidable. It may not be overtly present in a particular conflict, but nonetheless, it is there.

Finally, someone has suggested there should be a procedure at the parliamentary and congressional level, so as to avoid having statutes emerge with potential conflicts built into them. I believe this is a very good suggestion. There is one problem, however, which comes to mind and which Donald Baker mentioned at the antitrust seminar. Each time Americans sit down with Canadians and begin to talk about how we can avoid conflicts in antitrust matters, the Americans view the Canadian objections as a Canadian trustbusting counter thrust. They say to the Canadians: "Why don't you start applying your law extraterritorially? It is much more effective that way, and

then you would not object to the fact that we do it." There seems to be this fundamental disagreement as to the scope of antitrust law, and I am sure this is true in other areas, as well. It is just not going to work sitting down. There are basic misunderstandings about the role of competition policy in our two countries, just as there are probably basic misunderstandings about the role of other legislation and policies. It seems as though Americans cannot accept the fact that our legislation is the way it is here. Competition policy played a different part in the history of Canadian trade than it did in America.

Beatrice Bazar

I have two brief questions, one of which is directed to Mr. Biggs and the other to you, Mr. Drucker. Mr. Biggs, you stated that the application of countervailing duty law, for the first time, to indirect assistance in the form of regional development programs raised global concern. I was not aware of this general worldwide concern. Could you just refresh my memory on that?

William Biggs

I believe some of the European nations were worried about this because they were also going into regional development schemes at that time. Mr. Picker could probably explain more about that than I can.

Sidney Picker, Jr.

In the United States, the countervailing duty statute had been on the books for many years. However, relatively few cases ever arose under the ambiguously worded statute which authorized the United States to impose special duties on imported products, designed to offset bounties or grants paid by governments (or others) for their production, manufacture or export. Until the Michelin Tire case, in the early 1970's, no one really knew what a bounty or grant was. In addition to making clear, in that case, that bounty or grant included federal, provincial and local development loans, property and other tax benefits or holidays, (notwithstanding the fact that such benefits were not designed to promote exports from Canada but rather to encourage Nova Scotia's development), the Michelin Tire case also made clear that the United States Secretary of the Treasury was without discretion in whether or not to apply the countervailing duty; once the bounty or grant was determined, the duty must be assessed.

Greater use of the United States countervailing duty was inevitable following that decision. The countervailing duty legislation would now be used to offset subsidies designed to promote internal development rather than those designed to promote exports. Thus, the United States placed itself in the position of frustrating another country's internal efforts toward economic self-improvement. Such American action not only invites imitation by other countries anxious to find new ways of inhibiting imports but also invites retaliation by countries whose exports are diminished by reason of the countervailing duty statute.

Beatrice Bazar

Mr. Drucker, based on your own experience, what are the limits of the practice of private international law? Where is the area of the practice of private international law in relation to the types of legal problems we are discussing here?

Chairman Drucker

I hesitate to try to answer that question directly because it is one which has been exercised in my own mind. Most of our discussion has been concerned with the relation between the United States and Canada as independent states. We have not touched upon, in any detail, disputes between individual persons, and between individuals or corporations and either of the nation-states.

W. H. Montgomery

With regard to the application of countervailing duty law, it may be that we caused worldwide concern with the Michelin case. I do not think it would be entirely correct to say that we, for the first time, brought it to public attention. The problems in countervailing law and export development programs by developing countries have been well-known for a number of years. This case did have an influence, but it was certainly bandied about before that in other fora. There has been considerable discussion of the difficulties involved in aid programs and regional improvement programs, in relation to countervailing laws. This is a problem that the Europeans had with the Treaty of Rome, and it is a problem for developing countries in relation to their subsidies of industry.

Sidney Picker, Jr.

I did not suggest that the countervailing duty problem did not exist prior to the Michelin Tire case. Until that case, however, the application of countervailing duties by any developed county did not pose a serious barrier to international trade. After that case, the very real threat of expanded use of countervailing duties forced countries around the world to give this subject their full attention. Consequently, there is a real possibility that at the current round of GATT trade negotiations, an International Countervailing Duty Code will be negotiated similar to the International Antidumping Code agreed to at the conclusion of the Kennedy Round of GATT negotiations, in 1967. Whether such a Code would be any more effective than the Antidumping Code, of course, remains to be seen, but the fact remains that GATT participants are now in the process of negotiating a Countervailing Duty Code.

W. H. Montgomery

The question was posed, by the paper presented here, whether multilateral tools, such as GATT, might be useful in the context of Canadian-American bilateral difficulties. Perhaps they cannot. I must confess

that, in terms of the sources of bilateral economic problems between Canada and the United States, as with other bilateral problems, I am really very cynical about the solution of these problems. It has been my observation that states act in economic areas according to how they perceive their own interests. They act in immediacy to a particular problem, and they often have acted, in terms of their national economic interests, in a global manner. They may believe all of their actions can be resolved through both bilateral and multilateral discussions. They may be quite prepared to bear the consequences that follow such discussions, because there is pressure or purpose in their action which motivates them.

One of the problems of economic solution in dispute settlement is that in a great number of cases, there is tremendous pressure if, for example, you have someone responding to someone else's action. I think we choose our solutions, in the Canada-United States context, based upon which solution usually provides the most ready benefit for Canada in protecting a Canadian uniqueness. If we are dealing with boundaries, we could afford a long-term dispute settlement procedure. The boundary is not going to go away; it is going to be there five years from now. There may be a dispute which has economic aspects of concern to particular groups in another country, but the boundary will remain.

On the other hand, in dealing with something like convention expenses, if we enter into a long-term dispute settlement, you may resolve and win your position. By the time you do, however, there will be no convention industry left to benefit from this dispute settlement. This applies to the Michelin Tire case. Canada might have made its point, ultimately, through international pressures, if it had had the opportunity of seeking a multilateral solution. The balance of world opinion, in terms of countervailance, was on the Canadian side. But by the time we could ever succeed in that, there would have been no Michelin plant in the Maritime, and our regional development program would have been placed in jeopardy.

Therefore, we have to seek an immediate solution. If, for example, we close off the importation of raspberries into the Fraser Valley for three months, the Americans have to react immediately. They cannot go into a long-term dispute settlement procedure because all the raspberries in the State of Washington will have dried up. The solution has to be immediate.

Looking primarily at the GATT, I do not think institutions such as the International Tin or Sugar Councils are the appropriate bodies for use in the settlement of disputes. The commodity associations are really legal combines for the stabilization of trade and the fixing of commodity prices. Their objectives and purposes are different. They do not normally provide, after their assistance, a process for dispute settlement.

While the multilateral context can present very real advantages for certain countries such as Canada, it must be understood that the advantage of interests favors the major traders. Canada is, in certain respects, a major trader, but it is not, in terms of industrialized consumption, a major trader. When we faced a combination of the interests of the United States, the Euro-

pean community and Japan in the GATT, we had to move with very great caution. The GATT can provide a process for the exposure of the Canadian intersts and given greater publicity in the international community. As an illustration of this, GATT recently criticized the United States severely for DISC. The report is only a recommendation, and even if it does come down on the side of the countries who were damaged by the American application of DISC, it is really incidental in 1977, as the report indicated, since the damage took place several years earlier.

The GATT is a multilateral institution, and it does provide a basis for further exposure of Canadian views. There exists a commonality of interest between Canada and other countries, and this permits a buildup of defense for our position. Unfortunately, the GATT has had an increasing tendency to spin off special regimes. I think the best known of these is the textiles arrangement where, again, countries with particular trading interests brought themselves into a smaller forum. Consequently, they have a much greater capacity to exercise their individual trading interests, and in that situation, Canada would be found in a position that would be extremely difficult to defend. As the GATT proceeds with this tendency to spin off these special regimes, I think Canada has been very wary of committing itself to a multilateral forum for dispute settlement procedures.

Barry Campbell

The whole uranium issue is a perfect example of non-resolution. It is also an example of a situation in which a dispute avoidance scheme has not prevented a dispute from arising. Something that is very important to one party is up against something that is important to the other party, and they are not willing to stop it. They react, and it becomes an extremely complex question. It is not entirely true that no progress is made through consultation. But the uranium dispute, and antitrust in general, is a possible example of an ongoing relationship that is not giving satisfactory results, although a mechanism exists for dispute avoidance.

Ann-Marie Jacomy-Millette

I was wondering whether the nature of our federal-provincial system, with two levels of government interacting economically with each other and with foreign governments, has an effect upon our relationship with the United States in dispute settlement matters, as they do not have the same problems we have here.

William Biggs

I think the federal system in Canada really does make it different from the United States. The recent arrival of more provincial-state, individual-state and provincial-regional agreements is going to cause many problems in some dispute questions. Saskatchewan's potash industry provides a good example of some of the problems we may encounter in the future.

Chairman Drucker

It is my understanding that Canada has not signed or ratified the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, because it is a federal system which requires consultation with the provinces before such a treaty can be signed. The Americans have signed at least one of the promotions.

W. H. Montgomery

The differences in point of view between the federal and the provincial governments on economic questions, large as they are, have often tended to be overcome in a situation where a particular economic interest is being endangered. Sometimes an action of the United States will have effects across the country. On other occasions, it will be in terms of a particular part or clause. As a generalization, and I realize there are exceptions, when a province has found itself dealing with an industry or an economic interest threatened by a foreign action, it tends to see its interest in relation to the federal interest. In this manner, all resources are brought to bear upon devising a solution.