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Preface

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The Canada-United States Law Institute was formed in 1976 at Case Western Reserve University School of Law in Cleveland, Ohio and the University of Western Ontario Law School in London, Ontario. The theoretical underpinning of the Institute was the recognition of Canada and the United States as two neighboring common law origined countries each of which undertook a different but related historic path, developed its own unique federated structure, and established its own constitutional foundation, thus providing an ideal basis for maximizing the advantages of comparative legal studies. Each country is the most important trade, investment, and industrial partner of the other, and thus deserves careful examination with an appreciation of the transnational impact of legal regulation.

Accordingly, the Institute established the first formal continuing program in either country designed to use the legal systems and structure of the other for comparative and transnational law purposes, as part of the process of legal education. This was done in a number of ways, one of which was the organization and sponsorship of conferences on subjects of interest to the legal communities in both countries. During the initial years of operation the primary focus of Institute activities was directed toward the use of comparative law for education purposes within a five part setting including, in addition to the conferences: faculty exchanges, student exchanges, research grants, and a scholarly journal.

In 1982, Ernest Gellhorn assumed the position of Dean of the Case Western Reserve Law School. Given Dean Gellhorn's substantial background and interest in economics and the role economic analysis will play in shaping legal decision making and institutional structures, the law school has undertaken an expansion of its Law and Economics program. The role of economics, and its emergence in legal analysis, similarly afford the Institute a substantial opportunity to explore this

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** From H. King, *The Interface of Law and Economic Policy in the United States and Canada*, Remarks delivered at the Brookings Institution (Washington, D.C., Jan. 11, 1984), at which plans for the *Conference on the Legal Aspects of Sectoral Integration* were announced.

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developing interdisciplinary relationship in both Canada and the United States, particularly in light of the economic interdependence of the two countries.

One of the areas on which the Institute, with the support of a grant from the William H. Donner Foundation, will focus is the matter of sectoral integration. The Institute has set April, 1985 as the date for a conference on this subject. The Conference will consider the experience under the *1965 Canada-U.S. Automotive Agreement* after twenty years as the first North American example of sectoral industrial integration. The Conference will be legally oriented and concern itself with the possible extension of the concept of sectoral integration to other areas of the economy. If sectoral integration does occur in certain industries, it must be tailormade to the special considerations of both the industries and the two governments. For such integration to be effective the concerns of the industry on both sides of the border must be taken into consideration and the pertinent legislation must be factored in.

Canadian concern in some circles revolves around the view that sectoral integration will merely mean that more Canadian branch plants will be dismantled and that additional products or facilities will be moved to the United States. Essentially the feeling on the part of some Canadians is that sectoral integration will mean the replacement of Canadian facilities by American facilities and facilities in other parts of the world. There is also a concern that research and development in Canada would suffer. The problems here are to give assurances to Canadians which meet these concerns and how such assurances can be legally implemented within our existing technology protection and antitrust legislation.

Many questions will have to be looked at and answered. From a legal standpoint, government preferences in sourcing will have to be accommodated to the concept of sectoral integration. A further question is how Canadian or U.S. government subsidies or assistance should be accommodated to the concept of sectoral integration. This has certainly been a problem in the EEC.

If sectoral integration is to become a reality, how will the impact of outside competition be factored in? Are there any legislative changes which need to be made to ensure that sectoral volume is maintained and protected from destructive outside competition? To make sectoral integration work, there must be some minimum production requirements to facilitate economies of scale. This may have antitrust implications which will need to be examined.

Some industry sectors for which sectoral integration has been talked about include urban mass transit, textiles, petrochemicals, forest products, and computer technology. Each sector has special needs and characteristics. If sectoral integration is to be accomplished it will have to be

with due consideration of these special factors. In Europe, sectoral integration started with the European Coal and Steel Community. Is the steel industry a candidate for sectoral integration in the Canada-US context?

No two nations in the world have as large an economic interdependence or comparable history of friendly relations. Therefore it is appropriate that we look at the possibility of additional sectoral integration between them. But if it does become a fact, we should keep in mind that disputes do arise in developing new legal and economic frameworks. We will need to develop a satisfactory disputes settlement procedure so that sectoral disputes are not allowed to fester. A provision might be established for the arbitration of disputes between the United States and Canada. The initiative of the American Bar Association—Canadian Bar Association Joint Working Group, of which I was U.S. Co-Chairman, may be relevant here. That provides for third party arbitration of disputes between the U.S. and Canada.

In terms of implementation of sectoral integration initiatives, we should keep in mind that in the U.S. the Congress holds the power, while in Canada the Executive holds it if delegated power exists or if what is agreed to is compatible with existing legislation. In Canada, parliamentary concurrence in the case of major trade agreements has, however, usually been obtained in the past. Included in the scope of any examination of the legal aspects of sectoral integration would be the consequences under the GATT.

Conceptually, sectoral integration on its face would seem to be economically beneficial to both countries. But in terms of implementation there is at all times an existing legal overhang to be considered. If we identify those elements of the legal frame of reference which must be dealt with early on, we shall be in a much better position to deal with them. We shall also be assured that where sectoral integration does occur it has a sound legal foundation. U.S.-Canada trade disputes are already many in number and we don't need any additional disputes which might result from a poorly thought out sectoral integration plan for a particular industry. Now is the time to anticipate the legal problems and to deal with them constructively—not five minutes after twelve when sectoral integration has become a reality.