

---

January 1986

## The Importance of Intellectual Property in Trade between Canada and the United States

Michael Cote Hon.

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

 Part of the [Transnational Law Commons](#)

---

### Recommended Citation

Michael Cote Hon., *The Importance of Intellectual Property in Trade between Canada and the United States*, 11 Can.-U.S. L.J. 7 (1986)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol11/iss/5>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## The Importance of Intellectual Property in Trade between Canada and the United States

*by The Honourable Michel Côté\**

**W**hen one looks at the agendas of international meetings these days, two issues surface more and more frequently with one another: Trade and Intellectual Property. And I do not have in mind only meetings of the World Intellectual Property Organization. I am referring to meetings of a variety of bodies, such as GATT or the O.E.C.D., whose main interests are trade and economic development.

This is not surprising. On the question of trade, the nations of the world are showing a new pragmatism about global economic progress. There is now almost universal agreement that trade is an essential ingredient to worldwide economic well-being.

As for intellectual property, it's on the agenda for many reasons. The answers to many of the world's problems are to be found in new technology. We all understand the need to have appropriate economic incentives to stimulate innovation. But we also recognize the need to spread the technical information resulting from innovation, in order to get new ideas and new products and processes into use, with as little delay as possible. Our interests are best served by pursuing both goals at the same time. But this does not happen automatically. The nations of the world are at different stages of economic development and have different views about intellectual property.

On the one hand, developing nations need access to innovation, and their priority is to acquire new technologies. Industrialized nations, on the other hand, owe a large share of their prosperity to innovation and want to receive a fair price for the technology they have developed. Obviously, there is some common ground, because continued access to technological innovation is unavoidably linked to its adequate protection and compensation. The only realistic approach, in my opinion, is to attempt to achieve a fair balance between the rights of innovators and the needs of users.

How do we know we are pursuing the right policy? The first thing to consider is that, surely, the nations of the world are seeking to capture the benefits of expanded trade flows. Adequate protection of intellectual property right promotes the expansion of trade, while abuse of such

---

\* Minister of Consumer and Corporate Affairs in Canada.

rights works in the opposite direction: it tends to impede trade. A good yardstick, then, is the extent to which our policies on intellectual property facilitate or hinder trade flows. But intellectual property rights have as much significance domestically as they have internationally.

First of all, certainty is essential to a good business climate. Firms need to know what the ground rules are, what can be sold at home and abroad and under what conditions. Trade marks, for example, provide invaluable product identification. We could ask ourselves: What would have been the chances of MacDonal'd's opening a franchise in China without the world-wide recognition of its name and logo?

Business also needs to be able to trade with the certainty that technology developed at great effort and expense will be protected by foreign and domestic patent laws. It needs guarantees that trade marks will not be used without permission by a foreign manufacturer producing inferior goods that are then sold at predatory prices.

Canadian industry needs know-how and technological inputs in order to achieve the level of efficiency required to compete successfully in world markets today. We are realistic: Canada is dependent on such inputs because, like most other nations, it cannot generate all, or even a major portion, of the technology it needs from domestic sources. It must necessarily rely on a good patent system as a window on the technological world.

Canada, therefore, has good domestic reasons for protecting intellectual property by enacting adequate legislation. It recognizes that such protection provides a necessary incentive to creative activities. Further, because of the protection which Canadian creators enjoy in large foreign markets, Canada has an interest in ensuring that the international intellectual property regime works effectively. There is no doubt, in our view, that sound multilateral arrangements for the protection of intellectual property will foster both certainty and trade.

This brings me to the subject of intellectual property in the context of Canada-United States trade. There is perhaps little need to remind you that one of the most important facts regarding the Canadian economy is the size of its trade sector. Every region of Canada depends on exports, and our major industries could not remain productive by world standards without access to foreign markets.

Canada and the United States are, in effect, the world's two largest trading partners. We are your biggest customer and vice versa. The U.S. sells more to the 25 million Canadians than it does to the 280 million people in the European Economic Community. The province of Ontario takes more American exports than Japan. This impressive flow of trade is also reflected in the area of intellectual property, as can be seen from the following statistics:

— More than 50% of the patents filed in Canada are of American origin.

- 80 to 90% of records and films sold in Canada are from the United States.
- Canadian royalty payments to the United States on patents, trade marks, and copyright are worth in excess of (Can)\$500 million annually, and the value of goods and services affected are many times that amount.

We have both been served well by this trade. We stand to do even better in the future, but we will need to accommodate our respective interests in the area of intellectual property. Among other things, we will have to examine some of our differences in the machinery we use, with a view to greater harmonization. And we will have to find answers to questions raised by new technologies and processes that challenge existing intellectual property laws—for example in biotechnology or genetic engineering, and computer software and chip design.

While there are some differences that will have to be discussed, there are also many common elements on which we can build. The first is that we have a common economic philosophy. We are both free-enterprise nations that recognize the importance of a healthy investment climate and of the key role of intellectual property, both domestically and in the international market. To a large extent, we share the same historical and cultural background.

Canada is aware that chief among the concerns on the American side are the problems raised by the production of counterfeit trade mark goods, copyright piracy in various forms, and the adequate patent protection of newly developed technology in many fields. The adoption of the Semiconductor Chip Protection Act of 1984 is evidence of the American interest in this area.

Canada shares those concerns with the United States. We also have an interest in seeing that a stable system of protection be put in place, not only within the Canadian and American economies, but throughout the world.

In fact, intellectual property has been on the agenda of the last two meetings between President Reagan and Prime Minister Mulroney. The Joint Declaration following the Quebec Summit last year made particular reference to the problems of counterfeit goods, cable/satellite retransmission and “other abuses of copyright and patent laws,” as subjects to be addressed in bilateral discussions.

Let me restate: The concerns we share with the United States on intellectual property are extremely important for Canada. And they must also be seen in the context of other negotiations which are, or will be, taking place on these questions, notably in future rounds of GATT talks. The government of Canada is determined to create and maintain a climate in which new intellectual property and technology can be created and protected—so that research and development can flourish, business can benefit from the latest technological advances, and the stability and certainty so necessary to our trade relations can be preserved.

Right now, intellectual property laws in Canada are, we must admit, antiquated for the most part. Their reform has been underway for many years. And it is the intention of our government to bring this process to its conclusion as early as possible. The Copyright Act, for example, has not had a major revision in six decades. The process of bringing it up to date is fairly advanced.

Soon after our government came to power, a Committee of the House of Commons was asked to review the old Act and to make recommendations. The committee issued its report last fall, and its approximately 140 recommendations cover the whole field of Copyright Law: from performers' rights to reprography, from computer programs to retransmission of T.V. signals on cable systems. The philosophy that pervades the report is clear: creators must be better rewarded for the various uses of their works and the law must recognize these rights.

Among key aspects which will be legislated and which are of particular interest to an American audience are the following:

- Copyright Protection of Computer Programs. The provisions in this respect will be clear and explicit. Investors and innovative firms will now have the certainty they need in order to make sound business decisions.
- Protection of Semiconductor Chip Design. We intend to adopt a system of protection similar to what the United States has introduced.
- The Problem of Piracy of Copyrighted Works. The illegal reproduction of films, sound and video recordings, computer software and other proprietary works will be subject to much tougher penalties than is the case at present. We are firmly intent on curbing such practices.

Another component of the intellectual property protection system in Canada which is being modernized is the Patent Act. This legislation has not been substantially revised for about fifty years. As the minister responsible for this statute, I will soon be presenting amendments to bring it up to date in several respects.

Some of the amendments will allow better harmonization of the Canadian Patent Office procedures with that of other nations. They will also enable Canada to ratify the Patent Co-operation Treaty—to which the United States, Japan, Europe and Australia already adhere. Others are aimed at making the patent system more efficient and less cumbersome, for example, by facilitating the automation of operations (to follow the trend in the United States, Europe and Japan). These amendments will also make it easier to put the emphasis on the dissemination of technical and scientific information embodied in the patent registry.

Other amendments are aimed at modifying aspects of the law which are currently impeding the role that the patent system should have in promoting investment in research and development activities in Canadian industries, particularly in the pharmaceutical sector. Finally, legislation is also being considered to protect the rights of inventors in the

field of biotechnology, and of breeders of new varieties of plants in Canada.

In a sense, Canada is in a unique posture with regard to intellectual property matters. We have a healthy and well developed market economy. We share the interests of our major trading partners in seeing the emergence of a strong and workable system of protection for intellectual property. Yet, at the same time, we are a net importer of technology, and we are still largely dependent on raw materials and agricultural exports. Our stance in international negotiations has to take this paradox into account.

Naturally, in the Canada-U.S. context, many factors influence our mutual trade, as well as our respective economic fortunes: the level of interest rates, trade and non-trade barriers, fluctuations in currency exchange rates, and productivity performance, to name but a few. But, intellectual property matters also have rather important implications, even though they tend to receive very little attention. And it is not an exaggeration to say that, to a large extent, intellectual property will be a key factor in helping to determine the technological and industrial future of both our nations, in an increasingly competitive world.

The changes I briefly presented should contribute to bringing us closer together in matters of intellectual property. But we still have to reconcile some differing national interests. And I am convinced that the solution lies more in trying to accommodate these differences than in attempting to eliminate them entirely.

For its part, the Government of Canada is resolved to develop and put in place policies that will best promote our mutual and common interests in this crucial, yet often overlooked field.

