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Closing Remarks and Discussion

Henry T. King, Jr.

I would like to take this opportunity to discuss some ideas for future programs of the Canada-U.S. Law Institute, and we will certainly be glad to receive any suggestions.

One possible program could deal with the problem of people in the Canada-U.S. context. This would include how we utilize people, how they are educated, the tax structures that affect people who cross the border to work, the problems of transferring people and the impact of free trade in services. One group that has been excluded from the freer exchange in services across the border is lawyers. Perhaps with the progress of the Free Trade Agreement ("FTA") and recent developments in Europe, that will change. The European Community ("EC") is moving toward a freer trade in services across borders, even with the legal fraternity. However, there are differences between Canada and the United States with regard to people, education, training, compensation, taxes and benefits. Because we are talking about different categories of people, this topic would have to include not only the nature of the Canada-U.S. structure, but also the effects on both blue-collar and white-collar workers. Of course, union relations would also be considered. We live in a world of people, and that makes this topic particularly relevant to us all.

Another possible topic is the question of dispute settlement in the Canada-U.S. context. By next year we will have had some experience working with the FTA. This year one of our Conference participants is Jim Holbein, who is head of the U.S. Secretariat covering this area of the Free Trade Agreement. He has identified to me some current disputes, including the *Red Raspberry* case, the *Plywood* case and the *Paving Equipment* case. There will be binational panels created to deal with these cases. The problem of dispute settlement between the two countries, not only in the trade area, but also in other areas, including private party disputes over technology and joint venture disputes, would certainly be timely. Such a program would also deal with what remedies are available, both in terms of judicial settlement and arbitral disposition of disputes.

Another possibility is the question of sovereignty in the Canada-U.S. context. How are we affected by it? This would encompass the problem of extra-territorial application of laws, the question of limitations on sovereignty in achieving a goal, and how this compares with what has been done in the EC.

One idea among many raised by Pat Choate is the question of law

and politics in the North American context. Such a program might deal with legislative processes in both countries, how objectives are pursued through legislation or other means, how goals are achieved and the reality of politics on both sides of the border. For instance, there were some surprises concerning the FTA in Canada. Certainly the fact that the Canadian Senate contributed to the delay in ratification was a big surprise to everyone. I served as the U.S. Chairman of the Joint Working Group of the American Bar Association and the Canadian Bar Association on the Free Trade Agreement. We made some observations which were incorporated into the FTA, and we had a good feel for the context. We thought there was a problem on the U.S. side and no problem on the Canadian side, but subsequent events showed how little we knew, at least on the U.S. side, of what could happen in Canada. One approach to a program would be to take law and politics in a given functional area, for instance procurement or agriculture, and look at it with regard to particular issues.

These are some possibilities for future programs. Certainly, there are other possibilities, but I would like to get some comments as to what future topics we might consider.

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QUESTION, Mr. Delay: New companies in the technology business are often economically fragile and many of the Fortune 500 companies are having some difficulty with debt burden, increasing the likelihood that R&D expenses will be cut. If we have an economic down cycle, what legislative changes will we need to make to produce an upsurge of innovation?

ANSWER, Professor King: That is a good question. In other words, if there is a down cycle, what do you do so that you do not slow down the very thing that keeps the engine going. That might be part of another overall topic and it is certainly a possibility.

COMMENT, Mr. O'Grady: Everybody in Canada has been saying that the Canada-U.S. Free Trade Agreement will have to be monitored very carefully, because a great deal of it is very vague and specific areas remain to be negotiated. I am predicting, although I am in a minority, that this will be a hot issue in the next federal election campaign, so a possible program would be just to monitor developments one or two years down the road and bring in people who are familiar with the various sector industries to describe how it is working in actual practice and how those developments fit into the bigger picture.

COMMENT, Professor King: Once before we monitored the developments in the EC at a conference in Washington in 1960. It was very profitable and quite productive. You are suggesting something similar, monitoring the developments and the changes that have taken place under the Free Trade Agreement in terms of sectors.

We could discuss the legal aspects of the FTA and their impact on

individual companies, whether the FTA is causing unemployment within small companies in Canada, whether it is causing successes at some of the big ones. For instance, we could address how U.S. furniture manufacturers are affected by removal of the Canadian tariff on furniture and what effect it has on Canadian furniture manufacturers. The effects of the FTA on the U.S. steel industry or on Japanese patterns of penetration in Canada and the United States could also be discussed.

COMMENT, Mr. Bradley: I like the program on people aspects because the United States is already projecting a shortage of scientists and engineers in the not too distant future. The same projections have been made domestically in Canada. The North American shortage is going to be dramatic and I suspect that the Canadian shortage is going to be even worse than the U.S. shortage. That will involve not only questions about immigration between Canada and the United States, but also questions about immigration from other countries. Perhaps a program might be developed around that.

COMMENT, Professor King: One of the problems that Canada has always had is the "brain drain" from Canada to the United States. What is the impact of the Free Trade Agreement going to be on that? Will it create shortages? Will it create differences in terms of occupations in Canada and the United States? I think that those issues must be addressed. We are a people-oriented society and people play a major role in terms of what happens.

COMMENT, Dean McNiven: Let me add a few comments on the same point. There is a two-tier advertising process for professors in Canadian universities, which is legally required by the immigration people. You have to try hiring in Canada first, and if you cannot find somebody then you can go elsewhere. This has been dropped for business school professors because the shortage in areas like business finance right now is such that there are three jobs for every applicant. The requirement is being dropped for engineering as well. It is an extreme shortage.

On the other hand, U.S. health maintenance organizations are now coming to Canada to recruit nurses. The teaching situation is starting to change in both countries. The shortage in some of the skilled or highly-educated professions is really going to start creating all kinds of pressures that are exactly the opposite of what they were five years ago. I think you will really start to see this as a major issue in the next year or two, not five years from now.

COMMENT, Professor King: One significant point, indicated by Paul Orefice, the Chairman of Dow, is that his company alone hired 10% of all the chemical engineers graduated from U.S. universities.

COMMENT, Dean McNiven: One of the personnel people at Bell Northern, the research and development arm of Northern Telecom, was saying to me last fall that they expect, in five years, that they are going to

have to absorb the entire Canadian graduating class of electrical engineers.

COMMENT, Professor King: The people aspects are pretty vital. We have already established some of the goals that these larger companies have. In addition, there is the problem of the smaller companies and how they maneuver in this more technical world of the future.

COMMENT, Professor Shanker: Something occurred to me as I listened to Mr. Choate's remarks. We now have this Free Trade Agreement, but Europe has much more of a free trade agreement. They have kind of a consortium for Europe that deals vis-a-vis the rest of the world. I do not think that the Canada-U.S. Free Trade Agreement goes that far, but a North American political structure may be needed or even required for us to deal with foreign issues and survival in the world. That might be an interesting topic.

COMMENT, Professor King: That is something of long-term interest. The problem is that it is too soon after the passage of the Free Trade Agreement and we do not want to disturb what is already in place. You have to keep in mind that the Free Trade Agreement was supported in Canada by a party which won the election, but got only 43% of the votes.

COMMENT, Dr. Strub: For completeness of information allow me to make one comment. The EC also started with a free trade agreement, although our real goal was to create the European Economic Community. We called the first agreements the Coal and Steel Treaty and the Atomic Energy Treaty, but the basis was free trade. It took us twenty years to recognize that. I am not predicting that the same thing will happen between Canada and the United States, I just wanted to remind you of how the EC started. Free trade has so much impact on all areas of life.

COMMENT, Professor King: When the Joint Working Group of the American Bar Association and the Canadian Bar Association looked at the problem of dispute settlement between the two countries, we recommended the creation of new institutions. This was not done as such, but it may well be happening on a more pragmatic basis, and we believe that we influenced the creation of the Canada-U.S. Free Trade Commission. However, we also recommended a Canada-U.S. Free Trade Tribunal, which was not adopted. Our emphasis was on the need for institutions to support the Free Trade Agreement, similar to what has happened in the EC, so I think your point is very well taken.

COMMENT, Mr. Ryans: I would just like to make an addendum to an earlier point concerning the shortage that we see in schools. Particularly in engineering and in the sciences we are relying very heavily on foreign students. Many of our programs are made up almost entirely of foreign students. What impact has that had?

COMMENT, Mr. Mackey: We need more programs aimed at a

much younger age group. Members of the U.S. Patent Office and some of the school systems, starting in Buffalo, New York, and now in Texas, are making an effort to work with children in science programs encouraging innovation and inventiveness. ITT has held a science fair in Washington each year for a number of years. I think that some of that effort, at least in the United States, could be of interest in sessions dealing with building up the educational infrastructure.

COMMENT, Dean McNiven: Let me throw out a few more ideas. For twenty years Canada struggled to deal with foreign investment and finally ended up signing the Free Trade Agreement. Now the United States is starting to experience similar problems regarding foreign investment. It might be interesting to have a session where Canadians talk about the struggle to control foreign investment, which ended in the Free Trade Agreement and compare that to the United States' concerns about the Japanese and others.

COMMENT, Professor King: Well, we have two societies with some of the same economic patterns, but what Pat Choate was talking about was that fact that in dealing with the Japanese it is a whole different ball game and the problems of foreign investment are quite different.

COMMENT, Dean McNiven: I would have to disagree. I think it is the same process. The reaction to the threat is identical — "They're going to take us over and tell us all what to do." I think if you looked at the Canadian reaction to large U.S. multinationals, you would see the same reaction in the United States today to the large Japanese companies. It is the same sort of reaction and they are moving in the same direction.

QUESTION, Mr. Fay: Would it be possible to hear from the Administration? There should be a Science Advisor in place and there may be some developments in trade policy which would be relevant.

ANSWER, Professor King: I do not know whether we could build a conference around that, although I think the Science Advisor would have something to say as a speaker.

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I want to close by thanking those who made this Conference possible. Certainly the full participation of everyone here added a great deal and our speakers were first rate in every way. The question periods at a grouping like this are certainly key, and the exchange between the participants and those on the platform is always an opportunity to learn and grow.

Above all I wanted to thank Kamala Mohammed for assembling our Conference materials. They are an excellent reference point on everything that happened during the Conference. In addition, I would like to thank Shelly Boone, our court reporter, who listened to every word. Finally, let me thank our coordinator, Patti Hujarski, who made all these wonderful arrangements. Thank you to everyone involved for a

successful and stimulating few days. So, on that note, I declare the Conference adjourned.