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## Closing Remarks and Discussion

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## Closing Remarks and Discussion

*Henry T. King, Jr.*

**T**his is the time when we discuss ideas for future programs of the Canada-United States Law Institute. Our programs have covered various subjects, but many topics remain.

One possible focal point for next year's program is taxes. We can look at the total tax picture in the U.S. and Canada and break it down into different levels and varieties of taxes. One angle could be the impact that taxes have on trade and investment between the two countries. Another angle could be an examination of how the tax structures of Canada and the U.S. compare with those of competitive countries; do our structures make us less competitive? Also, we could look at U.S. and Canadian taxes on income derived from overseas operations. Finally, we might consider whether there are any legislative or regulatory changes that could make us more competitive taxwise with our primary competitors in Japan and Germany.

Another possible topic is intellectual property — an area which was not covered by the Free Trade Agreement ("FTA"). There remain substantial differences between the U.S. and Canada in terms of their treatment of intellectual property. We could examine the differences in treatment of pharmaceuticals, genetic development and software. We could also look at the differences between Canadian and U.S. laws in this area and compare them with those of competitive countries. U.S. initiatives in protecting intellectual property with trading partners in the developed and developing world could be examined as well as could U.S. restrictions on imports which violate U.S. intellectual property laws. The possible establishment of joint institutions covering U.S. and Canadian patents and trademarks is also worthy of examination.

Another possibility which we might focus on is the matter of an industrial policy for North America (Canada/U.S.). Is it desirable that we have an industrial policy? We note that in the competitive world in which we operate, Japan and France, for example, very definitely have industrial policies, and that this is true of other countries as well. It is a broad program that covers a wide sweep of issues, and we could look at it from all sides.

These are just some thoughts. I would like to hear your ideas on what might be a good program.

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COMMENT, *Mr. Edwards*: In terms of timing, the tax issue might be interesting, particularly if we look at the tax systems in other coun-

tries and approach the issue broadly enough to include business, personal and the various kinds of taxes.

COMMENT, *Professor King*: Yes, that is an interesting angle because taxes are a competitive weapon. They can be used positively and negatively. We use them negatively in our foreign tax credit provisions. Other nations use them more favorably to activate business development.

COMMENT, *Mr. Wilson*: The subject of incentives would be very interesting and very political. They would be both international and domestic. The kinds of incentives I'm talking about, referring to your industrial strategy comment, are incentives by governments for industrial attraction and investment purposes. Of course, that's very much a matter of discussion under the North American Free Trade Agreement and the FTA.

COMMENT, *Mr. McNiven*: Another possibility is the whole area of standards and harmonization of standards. One of the fundamental developments of the EEC in 1992 has been some 300 areas where they're trying to harmonize standards. We are going through some of that between Canada and the United States in a variety of ways, too: product standards and process standards, and also such matters as who is a lawyer, who is a doctor, where can they practice — a whole variety of things.

Another alternative that we could focus on is the whole area of more training as opposed to education. There are significant moves on both sides of the border that haven't quite emerged, but probably by next year they will in terms of a heavy dose of private sector industrial training and a lot more money going into that area.

COMMENT, *Pierre Marlais*: I propose something on the health care issues. United States keeps asking if we should try to emulate the Canadian system, but I don't think we really understand it very well. It would be good if we got a perspective on how it really works and then see what we are trying to do internally in the United States — whether it should be done on a centralized or a state by state basis. It's extremely timely, it's going to continue to be timely over the next couple of years.

COMMENT, *Mr. Shanker*: I propose we look backwards to revisit some of the things we have talked about already. In the last two years, we've talked about educational problems, product liability, ADR, etc. Have we learned anything in the two, three or four years since we had these conferences? I mean "we" in the society sense. What's going on in some of these fields? Has anything been done to react to the problems that we identified?

COMMENT, *Professor King*: A topic that I would like to come back to again is that of a North American industrial policy. We could look at the differences between the United States/Canada, Germany and Japan. We are, for example, a bit ahead on innovation, and this is a subject which we did once before. We could, however, take another look

at the law and economics of innovation and how it could be done under the aegis of the broader subject of a North American industrial policy. This would be an umbrella topic that would give us an opportunity to update some of the points that we have covered in past conferences. Whether you should have a North American industrial policy is still debatable, but perhaps the world has changed so much that we may now require one.

COMMENT, *Mr. Delay*: There is some concern that trade piracy and industrial espionage will increase particularly because the former operators in the Soviet Union are now available for that line of work. Are the trade secrecy laws in the United States and Canada suitable for interim risks in which the theft of one invention can create a brand new company that has a tremendously powerful surge of initial sales? Are these laws actually working or actually old principles of the past that are no longer applicable?

COMMENT, *Professor King*: That comes under the general subject of innovation and when you may not be able to get a patent for your undisclosed know how regarding a particular process. The manufacturing of it may be protected by trade secrecy laws that exist at the state level. If our people are going to have their secrets taken away by other countries' operators, it is something we need to identify and look at with a view to getting some recommendations for solving it. Of course, the trade secret area is a problem.

COMMENT, *Mr. Wilson*: I think the whole concept of an information society and the crossborder flows and the ownership of information as it crosses the border is very much an issue. Canadians are very interested in fiber optic wiring in the United States, and Canada wants to be in on that network. There are issues when information crosses the border, and there are issues regarding the meaning of that crossing in terms of sovereignty. There are also a number of legal and tariff issues relating to information flows handled by telephone companies.

COMMENT, *Ms. Dallmeyer*: It's been done elsewhere, but we presume that NAFTA will be completed by early next year, and I can't think of any other place that is better situated to do an examination of NAFTA than this Institute.

COMMENT, *Mr. Ryans*: Expanding on the trans-crossborder communication of various kinds of data, we might just go a little further and assess a number of directives and see what impact they might have on a U.S.-Canada type of relationship.

Another possibility is looking at alliances. We have got all kinds of corporate alliances and they're configured in different ways. We could look at how those arrangements — particularly when you've got, say, a partner in Germany or some place like that — impact on business in the U.S. and Canada.

COMMENT, *Professor King*: I appreciate your ideas, and we will

consider all of them in terms of their timeliness, constituency and the availability of speakers.

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I want to thank the people who assisted in putting on this Conference. I want to pay special tribute Adria Sankovic, our program coordinator. She has done wonders in putting this program together. I also want to thank Mary Torok for what she has done in terms of her organization and materials. There is never a day that goes that I suppose some speaker has not received a call from Mary. I have appreciated her so much, and I always feel more comfortable when Mary is in the room, because I know that she is working with me and that she is at my side.

I also want to thank David Benson, who has done a very good job in helping us with the arrangements, and Lisa Hrovat, our court reporter. Finally, I want to thank our institutional memory, Patricia Hujarski, who has been on the other end of numerous phone calls from me. She is our former program coordinator emeritus now residing in Pittsburgh.

Well, without further ado, I declare this Conference adjourned.