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January 1991

## Seminar Background

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### Recommended Citation

Henry T. King Jr., *Seminar Background*, 17 Can.-U.S. L.J. 5 (1991)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol17/iss1/8>

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## Seminar Background

*Henry T. King, Jr.\**

**T**he Canada-United States Free Trade Agreement became effective on January 1, 1989, and has been in place for about two years. Although the results of this development have been significant, it contained some unfinished business as reflected in Articles 1906 and 1907. These articles provide that the parties will jointly seek to establish, over a five to seven year time span, a substitute system of compatible rules to remedy unfair pricing. This system would function as an alternative to anti-dumping laws of Canada and the United States currently in effect as applied to bilateral trade. It has been suggested that the competition or antitrust laws of both countries, with appropriate modification, be used as a substitute regime to replace these anti-dumping laws, both in dealing with unfair pricing and transport of commerce between Canada and the United States, and in accomplishing the objectives of the Free Trade Agreement.

The purpose of this seminar is to explore the alternatives to assist the negotiators in fulfilling the objectives of Articles 1906 and 1907 of the Free Trade Agreement. Hopefully, our discussions in this regard will be as broad, sweeping and incisive as possible. Our first session with Moderator Robert Ferchat of Canada will set the stage for our discussion. We will consider the challenge of Chapter 19 of the Free Trade Agreement with Presenters William Merkin of the United States and Jonathan Fried of Canada. Additionally, we will look at a new element in the anti-dumping equation, namely the U.S.-Mexico Free Trade Negotiations with William Cavitt of the U.S. Department of Commerce.

Our second session will be devoted to the Business Perspective: Cross Border Views. This session will examine the impact of a new regime on businesses from both sides of the border. The moderator for this session will be John Mullen of the United States, and our Presenters will be Robert McNeill and Neil Zundel of the United States and Roger Phillips and William Deeks of Canada.

Our legal session will be next. Here we will consider the similarities and differences between anti-dumping and competition regimes from the legal perspective. Our Moderator for this session will be Gary Horlick of the United States and our Presenters will be Ivan Feltham of Canada and Stuart Salen and Douglas Rosenthal of the United States.

Our final session will be devoted to the possible effects on present

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competition policy if a competition or antitrust regime were substituted for the current anti-dumping approach. We will examine this from the governments' perspective with Federal Trade Commissioner Deborah Owen of the United States and Derek Ireland of Canada. The session will be moderated by Robert Mathieson of the United States.

We encourage your full participation in these sessions. The quality and scope of the dialogue will determine the effectiveness of the proceedings. Here we can solicit all points of view on this important issue. The proceedings will be published in the *Canada-United States Law Journal*.

Participants in this session owe much to John Mullen. He has promoted this conference from its inception to its fruition here today. Robert Mathieson has also been extremely helpful and we are grateful to him for his efforts. I want to thank Ivan Feltham, Ronald Wonnacott, Stuart Salen and Robert Mathieson for their background paper.

James Chen and Helen Probst worked hard to compile an excellent set of conference materials. Ms. Probst has also been extremely helpful in other areas regarding the preparation of this conference. We are indeed grateful to Adele Gandal, the Institute Coordinator, who has performed yeoman service in developing the logistics for this conference. We are indeed grateful to the members of the Canada-U.S. Relations Committee, the Canadian Chamber of Commerce and the Chamber of Commerce of the United States, whose support has made this seminar possible.

Let us now proceed to our first panel. Our Moderator is Robert A. Ferchat, Chairman of the Board of Atomic Energy of Canada, Ltd. since July 1990. Prior to his present position, Mr. Ferchat was President of Northern Telecom, Canada. Before that, he held a number of key executive positions with Northern Telecom, Ltd. He is currently chairman of the Canadian/Korean Business Council and also chairs the Sectoral Advisory Group for International Trade for Telecommunications, Computers and Services. He is a member of the Board of Directors of Coscan Ltd. and Ortech International Ltd.