

1988

Volume 14

Canada-United States Law Journal

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

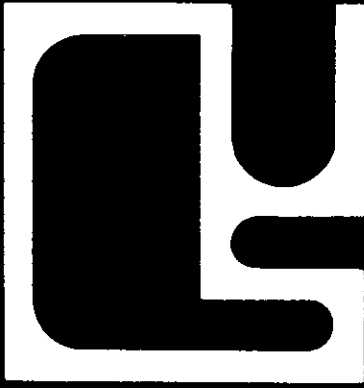
 Part of the [Transnational Law Commons](#)

Recommended Citation

Canada-United States Law Journal, *Volume 14*, 14 Can.-U.S. L.J. Iss. (1988)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol14/iss/44>

This Front Matter 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.



Canada- United States Law Journal

VOLUME 14

1988

DEC 19 1988

CONFERENCE PROCEEDINGS

**LEGAL ASPECTS OF CANADA-U.S.
COMPETITIVENESS
IN THE
WORLD CONTEXT**

Conducted Under the Auspices
of

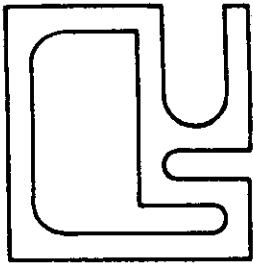
THE CANADA-UNITED STATES LAW INSTITUTE

and

CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

Cleveland, Ohio
April 8-10, 1988

CYRIL LAW LIBRARY



Canada-
United States
Law Journal

Volume Fourteen
1988

Case Western Reserve University
School of Law

Cite as:
CAN.-U.S. L. J.

The *Canada-United States Law Journal* is published by the Case Western Reserve Journal of International Law on behalf of the Canada-United States Law Institute. The *Journal* is currently an annual publication and subscription rates are \$8.00 per volume (domestic and foreign). Subscriptions are payable in advance. Back volumes may be purchased by contacting William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14290. The *Journal* welcomes submission of comments and correspondence from readers and authors. Address all correspondence to the Canada-United States Law Journal, 11075 East Blvd., Cleveland, Ohio 44106, U.S.A. Telephone: (216) 368-3291

The *Journal* also welcomes submission of articles on topics in international and comparative law. Manuscripts should be submitted in duplicate, typed triple-spaced, and should conform to the *United States Government Printing Office Style Manual*. Footnotes should be double-spaced and should conform to *A Uniform System of Citation* (14th ed.). Unpublished manuscripts will not be returned to the author unless requested.

The *Journal's* policy requires that unless a claim for nonreceipt of a journal is received within 3 months after the mailing date, the *Journal* cannot be held responsible for supplying that issue without charge.

The opinions expressed herein are those of the respective authors and not of the *Canada-United States Law Journal*.

The *Journal* is printed by Joe Christensen, Inc., 1540 Adams, Lincoln, Nebraska 68521.

Notice: Subscriptions are renewed automatically unless timely notice of cancellation is received.

THE CANADA-UNITED STATES LAW INSTITUTE

**Gratefully Acknowledges
A Grant From**

**THE WILLIAM H. DONNER
FOUNDATION**

For

**CONFERENCE ON
COMPETITION AND DISPUTE RESOLUTION
IN THE
NORTH AMERICAN CONTEXT**

**Cleveland, Ohio
April 8-10, 1988**

CANADA-UNITED STATES LAW INSTITUTE

Canadian Director

J. H. McLeod
Faculty of Law
University of Western Ontario
London, Ontario N6A 3K7
Canada

United States Director

Henry T. King, Jr.
School of Law
Case Western Reserve University
11075 East Boulevard
Cleveland, Ohio 44106

ADVISORY BOARD

Chairman

Sidney Picker, Jr.

Board Members

David Brink
Hon. W. Z. Estey
Paul Fraser
W. C. Graham
R. M. Ivey
John Krajewski

Henry T. King, Jr.
Monroe Leigh
Rosemary McCarney
Myres S. McDougal
J. H. Moore
Louis B. Sohn
D. Carlton Williams

On behalf of the Canada-United States Law Institute, the *Journal* gratefully acknowledges founding grants from the governments of Canada and the United States as well as the following foundations: The William H. Donner Foundation (U.S.); The Richard Ivey Foundation (Canada); The Cleveland Foundation (U.S.); The Ontario Bar Foundation (Canada); and The George Gund Foundation (U.S.).

MASTH69D

**Case Western Reserve
Journal of International Law**

1988-89 Editorial Board

Editor-in-Chief
John T. Paxman

Managing Editor
E. Marie Wheeler

Business Affairs Editor
Janet M. Albers

Executive Editors
David M. Lutz
Kathi Koehler

Notes Editor
Jeffrey B. Denning

Solicitations and Topics Development Editor
Denise A. DiPasquale

Editors

Natasha E. Brandt
Thomas A. Bruinsma
Gale Freeman
Henry G. Grossberg
Nick D. Hare
Tamara J. Hrynik
Bobbi L. Marsh

Kamala Mohammed
Eleonora Riesenman
Matthew D. Schwartz
Amy O. Scott
Pamela Theodotou
Michael E. Tousley

Faculty Advisor
Dean Peter Gerhart

Francis A. Boyle
Barry M. Fisher

Advisory Board
Robert A. Frielander

Christopher C. Joyner
Henry T. King, Jr.

Secretary
Anita M. Smola

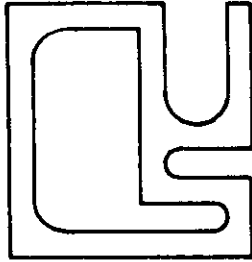
EDITOR'S NOTES

The following are the proceedings of a Conference held under the auspices of the Canada-United States Law Institute and Case Western Reserve University School of Law. The conference was held in Cleveland, Ohio on April 8-10, 1988. The theme of the Conference was *Legal Aspects of Canada-U.S. Competitiveness in The World Context*.

The articles and discussions printed here have been compiled from transcripts of the Conference and papers provided by the speakers. Footnotes are provided only to the extent they were included in these papers. Questions regarding unfootnoted factual assertions should be addressed to the authors.

The views expressed within are those of the authors or Conference participants and do not necessarily reflect the opinions or policies of any organization, governmental agency, corporation, etc. of which they may be affiliated.

(The Editor would like to thank those people who have assisted in the production and printing of this volume. The Editor is especially grateful to Lisa Hrovat of Mizantin Court Reporters and Anita Smola of the Case Western Reserve University Law School Staff.)



Canada-
United States
Law Journal

VOLUME 14

1988

PROCEEDINGS OF THE CANADA-UNITED STATES
LAW INSTITUTE CONFERENCE

LEGAL ASPECTS OF CANADA-U.S. COMPETITIVENESS
IN THE WORLD CONTEXT

Cleveland, Ohio
April 8-10, 1988

History and Purpose of the Canada-U.S. Law Institute <i>Sidney Picker, Jr.</i>	1
Introduction <i>Henry T. King, Jr.</i>	3
The U.S. Position in the World Economic Context <i>Michael Smith</i>	9
The Canadian Position in the World Economic Context <i>Percy T. Eastham</i>	15
Discussion After the Speeches of Percy T. Eastham and Michael Smith	21
Competitiveness and Labor Law: Are We Talking About Legal Issues? <i>Richard Martin Lyon</i>	29
The U.S.-Canada Free Trade Agreement and Collective Bargaining <i>George W. Adams</i>	41
Discussion After the Speeches of Richard Martin Lyon and George W. Adams	55

Competitive Impacts of U.S. Export Control Regulations <i>John Ellicott</i>	63
Competitive Impact of Canadian and U.S. Export Control Regulations: The Canadian Dimension <i>Jonathan T. Fried</i>	75
Discussion After the Speeches of John Ellicott and Jonathan T. Fried	81
U.S. Antitrust Aspects of Competing in Foreign Markets and the Canada-U.S. Trade Agreement <i>Joseph P. Griffin, Michael R. Calabrese</i>	85
Canadian Antitrust Aspects of Competing in Foreign Markets <i>Warren Grover</i>	93
U.S. and Canadian Antitrust Aspects of Competing in Foreign Markets <i>David G. Gill</i>	105
Discussion After the Speeches of Joseph P. Griffin, Warren Grover and David G. Gill	109
Current and Possible Future U.S. Trade Policies and Practices— Policy Trends, Dumping and Safeguards <i>Richard O. Cunningham</i>	115
Current and Possible Future International Rules Relating to Trade Adjustment Policies—Subsidies, Safeguards, Trade Adjustment Assistance: A View from Canada <i>Richard S. Gottlieb, Debra P. Steger, Darrel H. Pearson</i>	127
Discussion After the Speeches of Richard O. Cunningham and Richard S. Gottlieb	143
Effects of U.S. and Canadian Tax Legislation: A Canadian Perspective <i>Robert D. Brown</i>	151
Tax Aspects of U.S.-Canada Competitiveness <i>George G. Goodrich</i>	177
Discussion After the Speeches of Robert D. Brown and George G. Goodrich	189

The U.S. Product Liability System: A Competitive Advantage to Foreign Manufacturers <i>Randolph J. Stayin</i>	193
Product Liability Overseas: Competitive Effects on Canadian Industry <i>Grant Murray</i>	211
Discussion After the Speeches of Randolph J. Stayin and Grant Murray	217
Sourcing in America: Tangible Issues—As Seen by the Japanese <i>Tetsuo Kasuya</i>	221
Discussion After the Speech of Tetsuo Kasuya	231
The International Competitive Aspects of U.S. and Canadian Financial Incentives to Exports <i>James R. Sharpe</i>	233
The International Competitive Aspects of U.S. and Canadian Financial Incentives to Exports <i>John Coleman</i>	237
State Export Development Initiatives <i>James D. McNiven</i>	245
Discussion After the Speeches of James R. Sharpe, John Coleman and James D. McNiven	259
Intellectual Property Aspects of Canada-U.S. Competitiveness in the World Context <i>Richard M. Brennan</i>	263
Patent Harmonization Can Enhance the Global Competitiveness of Canada and the United States <i>William H. Duffey</i>	271
Discussion After the Speeches of Richard M. Brennan and William H. Duffey	277
The Changing Competitive Position of the U.S. Economy: Implications for Public Policy <i>Peter G. Morici</i>	283
Public Policy Issues Affecting Canada-U.S. Competitiveness <i>J. Laurent Thibault</i>	317

Discussion After the Speeches of Peter G. Morici and J. Laurent Thibault	323
The Power of Technology, The Challenge of Innovation <i>Gedas A. Sakus</i>	331
Discussion After the Speech of Gedas A. Sakus	339
Closing Comments of Professor King and Discussion	349

Canada-United States Law Institute Conference
on
Legal Aspects of Canada-U.S. Competitiveness in
the World Context
at
Centre One
Cleveland, Ohio

LIST OF PARTICIPANTS

George W. Adams	Campbell, Godfrey & Lewtas	Toronto, Ontario
Clive V. Allen	Northern Telecom Limited	Mississauga, Ontario
John A. Armstrong	Dofasco Incorporated	Hamilton, Ontario
Arthur Austin	Case Western Reserve University	Cleveland, Ohio
Gordon H. Bagley	Polysar Limited	Sarnia, Ontario
Elizabeth Bagnato	Business Laws, Incorporated	Chesterland, Ohio
Trevour Bartram	Cassels, Brock & Blackwell	Toronto, Ontario
Shelly Battram	Osler, Hoskin & Harcourt	Toronto, Ontario
Donald K. Belch	Stelco, Incorporated	Hamilton, Ontario
Jean G. Bertrand	Ogilvy, Renault	Montreal, Quebec
Cynthia A. Binns	Nordson Corporation	Westlake, Ohio
Richard Brennan	Int'l Anticounterfeiting Coalition	Washington, D.C.
Paul D. Brink	The Dow Chemical Company	Midland, Michigan
Robert Brown	Price Waterhouse	Toronto, Ontario
John C. Coleman	Department of Finance	Ottawa, Ontario
Nancy Cronin	Cuyahoga County Development	Cleveland, Ohio
Richard O. Cunningham	Steptoe & Johnson	Washington, D.C.
Dorinda G. Dallmeyer	University of Georgia	Athens, Georgia
William J. Davis	The Coca-Cola Company	Atlanta, Georgia
Leslie Delagran	Ministry of Industry, Trade & Technology	Toronto, Ontario
Gil Donohue	Department of State	Washington, D.C.
John Barry Donohue, Jr.	Reynolds Metals Company	Richmond, Virginia
William H. Duffey	Monsanto Company	St. Louis, Missouri
Percy T. Eastham	Department of External Affairs	Ottawa, Ontario
Richard Edwards	University of Toledo	Toledo, Ohio
Harry A. Elkan	UpJohn International Incorporated	Kalamazoo, Michigan
John Ellicott	Covington & Burling	Washington, D.C.
William Y. Epling	American Institute of Steel Con- struction Incorporated	Washington, D.C.
Asim Erdilek	Case Western Reserve University	Cleveland, Ohio
Jonathan T. Fried	Canadian Embassy	Washington, D.C.
Peter Gerhart	Case Western Reserve University	Cleveland, Ohio
David G. Gill	Exxon Corporation	New York, New York
Marcus Gleisser	The Plain Dealer	Cleveland, Ohio
David W. Goffin	The Canadian Chemical Producer's Association	Ottawa, Ontario
Allan J. Goodfellow	American Greetings Corporation	Cleveland, Ohio
George Goodrich	Arthur Anderson	Cleveland, Ohio
Richard S. Gottlieb	Gottlieb, Kaylor & Stocks	Montreal, Quebec
Joseph P. Griffin	Morgan, Lewis & Bockius	Washington, D.C.
Warren M.H. Grover	Blake, Cassels & Graydon	Toronto, Ontario

Donald E. Guinn	Aluminum Company of America	Pittsburgh, Penn.
A. Mosby Harvey, Jr.	Firestone Tire & Rubber	Akron, Ohio
Richard Heimlich	Motorola, Incorporated	Shaumburg, Illinois
Patti Hujarski	Case Western Reserve University	Cleveland, Ohio
Michel L. Jutras	Quit-Fer Et Titane	Montreal, Quebec
Al Kanetsky	Mitsui & Company	Cleveland, Ohio
Tetsuo Kasuya	Sumitomo Corporation of America	New York, New York
Henry T. King, Jr.	Case Western Reserve University	Cleveland, Ohio
Richard N. Kirby	Greater Cleveland Growth Association	Cleveland, Ohio
Howard Knopf	Consumer & Corporate Affairs	Hull, Quebec
Sven A. Langmack	Niagara Custombilt Manufacturing Company	Cleveland, Ohio
Wilbur C. Leatherberry	Case Western Reserve University	Cleveland, Ohio
Lawrence D. Lederman	Canadian Consulate	Cleveland, Ohio
Richard Martin Lyon	Seyfarth, Shaw, Fairweather & Geraldson	Chicago, Illinois
Glenn MacDonell	Department of External Affairs	Ottawa, Ontario
Peter A. Magnus	Osler, Hoskin & Harcourt	Ottawa, Ontario
Bruce McKee	IPSCO, Incorporated	Regina, Saskatchewan
Dr. James D. McNiven	Department of Development	Halifax, Nova Scotia
Jack R. Miller	Martineau Walker	Montreal, Quebec
Karen Moore	Case Western Reserve University	Cleveland, Ohio
Peter Morici	University of Maine	Orono, Maine
Peter Morrison	External Affairs of Canada	Ottawa, Ontario
Grant Murray	IBM Canada	Markham, Ontario
James B. Musgrove	Lang, Michener, Lash & Johnston	Toronto, Ontario
Catherine Novelli	Department of Commerce	Washington, D.C.
Sidney Picker, Jr.	Case Western Reserve University	Cleveland, Ohio
Arthur Pisani	Raymond & Dillon, P.C.	Detroit, Michigan
Mark J.J. Raines	Stikeman, Elliott	Toronto, Ontario
K. Vankata Raman	Queen's University	Kingston, Ontario
Erica Retter	Attorney	Columbus, Ohio
J. Michael Robinson, Q.C.	Fasken & Calvin	Toronto, Ontario
Jack Roberts	University of Western Ontario	London, Ontario
Gedas A. Sakus	Bell-Northern Research Ltd.	Ottawa, Ontario
Gerry Salembier	Department of Finance	Ottawa, Ontario
William P. Schofield	Department of State	Washington, D.C.
Oliver Schroeder	Case Western Reserve University	Cleveland, Ohio
James A. Sharpe	Export Bank of the United States	Washington, D.C.
Saul L. Sherman	Attorney	New York, New York
Ambassador Michael Smith	United States Trade Representative	Washington, D.C.
Randolph J. Stayin	Barnes & Thornburg	Washington, D.C.
Edwin Teple	Attorney-Arbitrator	Waite Hill, Ohio
J. Laurent Thibault	The Canadian Manufacturers' Association	Toronto, Ontario
Tom Thomsen	Alcan Rolled Products	Cleveland, Ohio
Austin C. Tingley	Canada Wire & Cable Limited	Don Mills, Ontario
Howard Wetston	Consumer & Corporate Affairs	Ottawa, Ontario
E. Marie Wheeler	Case Western Reserve University	Cleveland, Ohio
Odyi Wittman	Canadian Consulate	Cleveland, Ohio
Sanford Yosowitz	Alcan Aluminum	Cleveland, Ohio
Toby Zettler	Department of Commerce	Cleveland, Ohio