Recommendation 3. **Continued reform of IP law in the United States and increased transparency is needed to ensure that the U.S lives up to its trade obligations.**

(a) Section 104 of the U.S. Patent Act: First-to-Invent versus First-to-File

Article 1709(7) of the NAFTA requires that patents be available and patent rights enjoyable without discrimination. Section 104 of the U.S. Patent Act continues to discriminate in favour of inventive activity in the United States and has the potential to divert research and development to the U.S.. Under provisions of NAFTA, Section 104 should be fully amended to permit the unambiguous inclusion of activities in Canada and Mexico. Those parts of section 104 that continue to permit the potential for discrimination should be deleted or made non-applicable to Canada.

(b) Section 204 of the U.S. Patent Act

Intellectual property law in the United States must ensure that Canadian private investors have equal access to inventions in the United States as American investors have to Canadian inventions. U.S. Statute, 35 USC s204 restricts the exclusive right to use or sell an invention (created through a production licensing agreement between a firm and a government agency or laboratory) to those persons who "agree(s) that any products embodying the subject invention or produced through the use of the subject invention will be manufactured in the United States." It should be the goal of Canada to develop a separate, non-discriminatory accord with the United States in this area.

(c) Section 337 of the U.S. Tariff Act

Section 337, although recently amended, continues to discriminate against foreign companies. Canada will want to continue to push for modifications that bring Section 337 into conformity with the international obligations of the United States (Articles 48, 49 and 50(8) of the TRIPS Agreement) and Chapter 17 of the NAFTA (Articles 1715(8) and 1716 (8)).

Recommendation 4. **Canada Should Take a Lead on Defining Future IP Issues**

- **Patenting of Life Forms**

Currently, there is confusion within the Canadian legal community concerning a precise and acceptable definition of patentable living matter. The patenting of biological life forms needs to be addressed at the international level along with issues