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Foreword

Charles S. Colgan

PART II: CONFERENCE PAPERS*

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*Charles S. Colgan***

The Free Trade Agreement concluded between the United States and Canada, and signed on January 2, 1988, has a number of features that distinguish it among the trade agreements of the United States. It eliminates all tariffs, reduces restrictions on business travel, and establishes ground rules for trade in services and for foreign investment. In this latter respect, the Agreement is unique among major international trade agreements of the world. But one of the most enduring aspects of the Agreement is likely to be the provisions establishing a series of dispute settlement mechanisms.

This last observation would probably surprise almost anyone familiar with existing international trade agreements. The dispute settlement mechanisms of the General Agreement on Tariffs and Trade are notoriously weak. Other free trade agreements, such as the European Free Trade Agreement and the free trade agreement between Australia and New Zealand, have been more significant to economists and scholars of international relations interested in the effect of such agreements on trade patterns and the development of international organization than to legal scholars who are attempting to find new forms of dispute settlement. The emerging importance of dispute resolution procedures in the trade context, of which the United States-Canada Free Trade Agreement is the best current example, is an economic legal development that the legal community can ill afford to ignore. The perspectives of legal scholarship must be brought to bear on the formation and implementation of dispute settlement rules to inform legal practitioners of new developments central to the interests of clients for whom, in increasing numbers, international transactions are routine business.

The papers in this symposium undertake this examination. The papers provide a series of perspectives that focus on the United States-Canada Free Trade Agreement, the issues surrounding the Agreement, and on broader issues of dispute resolution in international trade.

First, long-established principles of international commercial arbitration are examined in the American and Canadian contexts. Professor Thomas Carbonneau reviews recent United States Supreme

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** State Economist, Maine State Planning Office, Augusta. B.A., Colby College; Ph.D. (ABA), University of Pennsylvania.

Court decisions on international commercial arbitration and points out how the failure to distinguish international and national legal principles may create more, rather than fewer, difficulties. Professor John Brierley discusses the "remarkable transformation" in Canadian arbitration law. Recent legislative enactments have resulted in full acceptance within Canada of the basic legal foundations for international commercial arbitration: the enforceability of international commercial arbitral awards and agreements by domestic courts.

Professor Alan Rugman examines the American countervailing and antidumping laws. These laws generated one of the most important disputes leading up to the Free Trade Agreement. Rugman's critiques have been very influential in formulating the Canadian government's position that a binational procedure for imposing such duties must be part of the Agreement.

Reviews of the dispute settlement provisions of the Free Trade Agreement from Canadian and American perspectives are offered by Dr. Ton Zuijdwijk and Professor David Cluchey. Their contributions examine the special provisions for antidumping and countervailing duty procedures in the Free Trade Agreement and review the more comprehensive dispute settlement mechanisms established by the Agreement. They conclude by raising questions about the potential effectiveness of these procedures in correcting the potential deficiencies in purely national procedures.

Questions about the shift from national to international dispute settlement are also raised by Professor Leon Trakman, who considers the allegedly contrasting styles of "public" and "private" dispute settlement procedures, and points to some of the special problems arbitrators ruling pursuant to the Free Trade Agreement are likely to confront.

Finally, Professor Craig McEwen examines some of the implications that the growth of domestic alternative dispute resolution, i.e., mediation and arbitration, may have for the creation of new forms of international trade dispute settlement mechanisms.

As McEwen concludes, there are undoubtedly more questions than answers concerning these new procedures and institutions. But just as the growth of international trade is revolutionizing national economies, so will the growth of new dispute resolution mechanisms transform legal systems. An understanding of what kinds of transformations are possible is of significant social, economic, and legal moment.