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INTRODUCTION

COMMONALITY OF STANDARDS – IMPLICATIONS FOR SOVEREIGNTY

Dirk Barrett, Jr.*

Professor King has asked me to moderate the discussions on commonality of standards. Among the many forms of regulation of economic activity practiced by the states in the developed world are the establishment of standards for products sold and the establishment of qualifications for professional service providers in the states. These can include, for example, requirements affecting the ingredients in food or beverages or concerning their labeling or minimum training qualifications for lawyers, engineers, or other professionals. Such regulation obviously is regarded as a legitimate exercise of state power to vindicate the legitimate interest, such as avoidance of consumer deception, and to protect the health and safety of consumers. This regulation is also a legitimate exercise of state sovereignty. However, it is possible that standards and qualifications can be established and applied in a way that compliance with local companies and citizens is easier and less costly than it is for foreigners.

In many cases, the advantage enjoyed by the national regulating company will be inevitable and unavoidable. In other cases, it can be the result of efforts to set or apply standards in a way designed more to protect local companies than to protect local consumers, or to vindicate other legitimate national interests. Because of this possible inappropriate restraint on the free trade of goods due to the establishment of standards, recent trade agreements have contained provisions under the rubric of technical trade that seek on the one hand to defer to a country’s legitimate regulatory concerns, including its right in general to establish a level of protection that it considers appropriate, while on the other hand guarding against unwarranted use of such regulations to protect locals.

Similarly, in the area of cross-border trade-in-services, the NAFTA contains language stating that certain licensing or certification of foreign nationals should not be more burdensome than necessary to ensure the quality of

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the service, and should not constitute a disguise or a restriction on cross-
border trade-in-services.

To discuss the impact, if any, of the commonality of standards on sover-
eignty from the U.S. prospective, we will hear this morning from Shirley
Coffield. She is well-experienced in the field of trade law and public policy,
having held legal positions in the U.S. Commerce Department, including one
as Assistant General Counsel of the U.S. Trade Representative. She has pub-
lished and lectured widely in the area. Currently, she is a partner at the
Washington law firm of Keller & Heckman, practicing international trade
law. She is an adjunct professor at Georgetown, teaching courses on the
NAFTA and other trade agreements. Ms. Coffield received her B.A. in po-
litical science from Willamette University, a graduate degree from the Uni-
versity of Wisconsin, and a J.D. with honors from George Washington Uni-
versity.

From the Canadian side, we will hear from Mr. James McIlroy. Mr. McIl-
roy has much experience advising the Canadian government in trade matters.
In 1984, he was appointed the Senior Policy Advisor to Canada’s Minister
for International Trade, and, in that capacity, he was involved in early days
of the Canada/U.S. Free Trade Agreement and other trade policy matters. He
has since then served on some Canadian/U.S. trade panels. Currently he is a
principal of the Toronto office of McIlroy & McIlroy, the firm which he
founded. It is a company which specializes in advising clients from a legal
and public policy standpoint, including government relations, international
intellectual property, and successful export strategies. He holds a B.S.C. from
Université de Montréal, an M.A. (Maîtrise) from the Sorbonne, and an LL.B.
from Osgoode Hall Law School. He is going to address essentially the same
area from the particular standpoint of regulations affecting cross-border
trade-in-services.