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Symposium, Sixth Annual Judicial Conference of the U.S. Court of International Trade, Introduction

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Abstract

This Symposium issue of the Fordham International Law Review presents six articles by experienced and recognized experts who participated in the Conference. These distinguished attorneys surveyed developments in the law that gave rise to the U.S. Court of International Trade and evaluated the effect of the Court's decisions over the past ten years.

SYMPOSIUM

SIXTH ANNUAL JUDICIAL CONFERENCE OF THE U.S. COURT OF INTERNATIONAL TRADE

INTRODUCTION

*Edward D. Re**

It is a distinct pleasure to write the Introduction to this special issue of the *Fordham International Law Journal* commemorating the Sixth Annual Judicial Conference of the U.S. Court of International Trade.

Personally, and on behalf of the judges of the Court, I wish to thank the editors and staff of the *Fordham International Law Journal* for publishing this special Symposium issue on the occasion of the Court's 1989 Judicial Conference.

The general purpose of the Court's Annual Judicial Conference is to report on the current state of the Court, to consider the business of the Court, and to ascertain means of improving the administration of justice by the Court. To achieve these goals, the Court has invited experienced practitioners and others with a keen interest in the administration of justice in the field of customs and international trade law to participate and contribute to the Conference. These persons include the judges of the Court, officials from the International Trade Commission, the Departments of Justice, Commerce, and Treasury, the Customs Service, members of the bar of the Court, and representatives of business and industry.

The theme of the 1989 Conference was "The United States Court of International Trade in the 1990's: The Continuing Significance of Judicial Review in a Changing Environment." This theme reflects the increased importance of judicial review in the resolution of international trade disputes, particularly as the rules governing the global economy undergo change in the coming decade.

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To facilitate this evaluation, it is important to understand the nature and purpose of judicial review. Review is not truly review unless it is *independent*. Review is not simply taking a second look at government action. Review is a second look to determine whether an administrative agency or official acted within the delegated authority. Review to be meaningful must be independent. It is our guarantee against illegal or arbitrary governmental action or abuse and misuse of discretion by officers of the government. Judicial review has been and will continue to serve as the guarantee or assurance that ours is a government of laws and the handmaiden of the rule of law.

This Symposium issue of the *Fordham International Law Journal* presents a series of six articles by experienced and recognized experts who participated in the Conference. These distinguished attorneys surveyed developments in the law that gave rise to the U.S. Court of International Trade and evaluated the effect of the Court's decisions over the past ten years.

The first panel at the Conference revisited the Trade Agreements Act of 1979 and the Customs Courts Act of 1980. Initially, the panelists described the myriad problems that existed with the substantive trade laws of the United States, and the various jurisdictional, remedial, and procedural hurdles faced by potential litigants in this area of the law. They then focused on the solutions intended by Congress in the 1979 and 1980 Acts.

Against this background, the Conference's second panel focused on the litigation experience over the past ten years. Experienced faculty evaluated the performance of the courts, the agencies, and the litigants themselves in achieving the stated purposes of the 1979 Trade Agreements Act, and the 1980 Customs Courts Act in reviewing antidumping and countervailing duty determinations. The Symposium's initial article, authored by James A. Toupin, examines the impact of judicial review on the operation of the International Trade Commission and the role of the Court of International Trade as an expert tribunal with judicial review responsibilities over antidumping and countervailing duty cases. The article concludes with some views on the effect of judicial review on international trade litigants. In the second article, Leonard M. Shambon examines the role of the participants in meeting a variety of competing congressional goals—namely (1) judicial

protection of transparency and increased procedural rights in the administrative proceedings, (2) increased opportunities for judicial review for interested parties to those administrative proceedings, and (3) the need for uniformity in the judicial review process, juxtaposed with the desire for a speedy resolution of judicial challenges to antidumping and countervailing duty determinations through the elimination of *de novo* review.

Unresolved issues pertaining to judicial review of enforcement activities by the Customs Service was the topic of discussion of the Conference's third panel. Here, a group of experts addressed the substantive and procedural pitfalls in the areas of liquidated damages, civil penalties, forfeitures, and seizures. Significant divergent viewpoints are represented in the next two articles of the Symposium. The first article is by Barbara M. Epstein, who provides some insights into five significant issues pertaining to liquidated damage claims brought by the government against an importer and/or its surety. Gilbert Lee Sandler presents a view from the private sector in making sense of the relations between the Customs Service and importers and their sureties.

With the fourth panel, the Conference turned its attention toward determining whether judicial review has proved effective in resolving antidumping and countervailing duty cases. Two of the expert panelists have prepared articles for this Symposium. David A. Hartquist, together with Jeffrey S. Beckington and Kathleen W. Cannon, discusses the coextensive issues of administrative nonacquiescence, collateral estoppel, and stare decisis and their implications for litigating antidumping and countervailing duty cases before the Court of International Trade. In the second article, Charles H. Nalls, with Paul R. Bardos, addresses the related question of the role of precedent, or stare decisis, in the litigation of antidumping and countervailing duty cases.

There is little doubt that the Court's Annual Judicial Conference serves an important function in bringing together the international trade legal community and in educating those interested in this important area of law. All the authors and participants in this special issue of the *Fordham International Law Journal* are to be congratulated for their contributions and for rendering a valuable public service to the entire international trade community.