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# Introduction: Trading Relationships and Technological Change--Electronic Commerce and Trade, the Government's Role

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## INTRODUCTION

### TRADING RELATIONSHIPS AND TECHNOLOGICAL CHANGE – ELECTRONIC COMMERCE AND TRADE, THE GOVERNMENT’S ROLE

*Dorinda Dallmeyer*\*

I am Dorinda Dallmeyer. For the last couple of years, Henry has given me the difficult task of being ringmaster and referee for the cultural industries exemption discussions. This year, he decided he would give me something totally non-controversial, electronic commerce and trade and the government’s role therein.

Electronic commerce is more complex at the international level even more so than at the national level because of such factors as taxation, contract law, customs payments, and differences in banking practices. While electronic commerce is growing rapidly, there are several open issues that must be resolved if it is to reach its full potential. First, there is legal globalization. Far more than standing alone as simple communication, how can a company gain an understanding of the business traditions of some company on the other side of the world when those conventions and traditions are often unwritten?

The contractual and financial issues are also a problem. What if a company on the Ivory Coast browses in an electronic catalog of a company in India, places an order electronically for products that will be delivered electronically, for example satellite photographs, and for which payment will be made electronically? This brings up issues and scenarios to warm a contract law professor’s heart, such as, at what point does a binding contract arise? What is the legal status of the contract? What body has legal jurisdiction over the contract? How is payment made and confirmed? What taxes and customs duties apply to the products? How do you monitor to collect them? Can you avoid this by setting up electronic manufacturing facilities in the third country?

As has been mentioned earlier today, in the case of electronic commerce, privacy and security issues arise, as well as issues of confidentiality, authen-

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tication, the ability of a party to ascertain the identity of the other party, and non-repudiation rules to assure that the transaction was actually executed. Who is going to be the trusted third party performing the certification function? In the past, by tradition, this role has been carried out by government.

There are issues of inter-connectivity and inter-operability. How do you ensure that every company and every consumer has access to all organizations offering products and services regardless of geographic location? What is the impact of the World Trade Organization on internal policies of government, such as the imposition of custom duties on electronic commerce? Even though governments may be determined to ensure that the potential benefits of electronic commerce will be fully realized and believe that a combination of the market and self-regulation by business can do much to safeguard this objective, there still remain certain areas where governments will have a role to play. These are the issues that our speakers today will be addressing.

First, we will hear from John Gero, who is Director General of Trade Policy Bureau II of the Department of Foreign Affairs and International Trade. He is an economist who joined the Canadian Government in 1975 and has worked in international aid and trade policy issues. He served the Canadian Permanent Mission in Geneva from 1987 to 1991 dealing with issues regarding both the GATT and the World Intellectual Property Organization. He was the Canadian negotiator of GATT and NAFTA on intellectual property. Mr. Gero has been in charge of divisions in the Department of Foreign Affairs and International Trade dealing with international intellectual property issues, general market access concerns, and trade remedies. Since the fall of 1996, Mr. Gero has been the Director General of the Trade Policy Bureau II, which is responsible for the trade policy aspects of investment, competition policy, government procurement, services, and intellectual property issues.

Jean Anderson is the head of Weil, Gotshal & Manges, a Washington, D.C.-based international trade group, where she provides strategic and substantive advice on international trade negotiations, litigates subsidies cases, and advises and represents clients in WTO and other trade agreement disputes, among a host of other activities.

Prior to joining the firm in 1989, she was Chief Counsel for International Trade at the U.S. Department of Commerce. In that position she was the principal negotiator of U.S.-Canada FTA and the primary architect of the Chapter 19 Dispute Settlement System. She somehow managed fifty attorneys among her duties in trade policy formulation, anti-dumping, and other trade remedy actions, GATT, and bilateral trade negotiations.