Law and Business Review of the Americas

Volume 15  Spring 2009  Number 2

Table of Contents

Perspective

Declaration of the Summit on Financial Markets and the World Economy .......................... 273 – 283

Articles

Regulation and Supervision of Microfinance Institutions: A Proposal for a Balanced Approach ............... B. Seth McNew 287 – 309

Sempra Energy International v. the Argentine Republic: Reaffirming the Rights of Foreign Investors to the Protection of ICSID Arbitration .... Daniel A. Krawiec 311 – 337

We Don’t Count! Rousseau’s General Will as a Tool to Judge the Legitimacy of the Judicial Decisions Relating to the Presidential Elections in Mexico and the United States .. Lao-Tze Smith 339 – 351

Brazilian States Tax War Explained by the Property Right Theories of Law and Economics–Fake Redistributive Policies Leading to Underdevelopment ...... Fábio Roberto Castilho and Rodrigo Frota Silveira 353 – 376

Comments and Casenotes

Medical Tourism: The Commodification of Health Care in Latin America ........ Angeleque Parsiyar 379 – 404

Innovation, Access and the Public’s Health: Intellectual Property Rights in Mexico and the TB Epidemic ............. Pamela Das 405 – 423
The São Francisco River Transposition Project: Friend or Foe to the Brazilian People .......... Jessica Lee

UPDATES

The New Argentine Consumer Defense Law. Punitive Damages: The Main Star ........ Agustin Cerolini

A Surrealist Country ......................... Tania Sordo Ruz

Canada Update-Highlights of Major Legal News and Significant Court Cases from August 2008 Through October 2008 ...... Romit S. Cheema

Recent Developments in NAFTA Law-Spring Update 2009 ..................... Melissa Long

DOCUMENT

South American Union of Nations Constitutive Treaty .................................
Editorial and Submission Policies:

This journal is a quarterly publication produced by the Southern Methodist University Dedman School of Law’s International Law Review Association (and its Law Institute of the Americas), as well as the Section of International Law and Practice of the American Bar Association. The journal relies on the ongoing cooperation of the SMU Tower Center, the SMU Departments of Economics and Political Science, the SMU Cox School of Business, and the London Forum of International Economic and Financial Law.

Aims and Publication Policy:

This journal addresses the legal, business, economic, political and social dimensions of Western Hemispheric integration efforts (e.g., NAFTA, FTAA, MERCOSUR, etc), their implementation, their future evolution and expansion, and their overall impact on doing business in the Americas. The journal will combine practical and policy implications of these integration processes. As such, it will cover not only matters of immediate concern and interest, but also matters respecting reform of legal, business, economic, political and social structures within the various countries in the Western Hemisphere. Subject matter concerning other regional integration efforts in the world and various other comparative topics in the international trade and investment areas will also be addressed, from time to time.

However, topics of particular concern to the journal will include: (1) free trade, direct investment, licensing, finance, taxation, litigation and dispute resolution, and organizational aspects of NAFTA and other specific integration efforts and their specific implementation; (2) subject matter involving economic, legal, political and social integration, and reform effects in Latin and Central America and in the Caribbean Basin; and (3) FTAA implications. For practical reasons, English is used as the language of communication.

Article Submission:

The editors will consider for publication manuscripts by contributors from any country. Articles will be subjected to a professional review procedure. Authors should ensure that the significance of a contribution would be apparent to readers outside the specific expertise. Special terms and abbreviations should be clearly defined in the text or notes.

Accepted manuscripts will be edited, if necessary, to improve the journal’s effectiveness of communication. If editing should be extensive, with a consequential danger of altering the meaning, the manuscript will be returned to the author for approval before type is set. Alternatively, the manuscript may be returned to the author to address the deficiencies. In all events, the editors reserve the right, after discussion with the author, to change its acceptance decision, or to move a publication from one issue to a later or earlier issue. The editors will not accept unsolicited student-written submissions, nor will they consider articles or reports that have been, or are to be, published elsewhere, or materials prepared for one’s clients or business promotion.

Manuscripts submitted for publication should be submitted in duplicate with a cover letter summarizing the contents to:

Editor-in-Chief
LAW AND BUSINESS REVIEW OF THE AMERICAS
Southern Methodist University
Dedman School of Law
P.O. Box 750116
Dallas, Texas 75275-0116
lbra-eic@list.smu.edu.

At the time the manuscript is submitted, written assurance must be given that the article has not been published, submitted, or accepted elsewhere. The author normally will be notified of acceptance, rejection or need for revision within 8-12 weeks.

Manuscripts may range from 6,000 to 10,000 words (approximately 20-30 pages in length). However, longer articles are accepted based upon topic, quality, and space availability. The title of the article should begin with a word useful in indexing and information retrieval. Text and endnotes should be double-spaced. All endnotes should be numbered in sequential order, as cited in the text. Unless for good reason acceptable to the editors, endnotes for legal articles should conform to The Bluebook, Uniform System of Citation (18th ed, 2005). For non-legal articles, the citations should be internally consistent within the given article. Authors should submit short biographical data, including his or her affiliation.

ISSN 1571-9537
THE INTERNATIONAL LAW REVIEW ASSOCIATION
An Association of The International Lawyer and Law and Business Review of the Americas
SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW
2008-2009 Student Editorial Board

President
JACOB McBRIDE

Law and Business Review of the Americas
Editor-in-Chief
PAMELA DAS
Managing Editor
MICHELLE BIVINS

The International Lawyer
Editor-in-Chief
JACOB CLIFTON
Managing Editor
JESSICA LEE

Associate Managing Editors
MICHAEL GAVIN
LAURA KEITH
BRAD PURCELL

Contents Editor
ROB WEITZEL

Note and Comment Editors
STEVEN QUALLS
WILLIAM RICHMOND
RACHEL RIDER

Symposium Editors
ADAM SAXON
ELLIOIT STRADER
JULIAN VASEK

Canada & NAFTA Reporters
ROMIT CHEEMA
MELISSA LONG

Study Series Editor
JENNY CANE

Managers of Business Development
JENNA BRAISTED
ANDREW C. BROWN
KRISTEN LEE BROWN
JOHN CAPEHART
JACQUELINE COWEN
MARGARET ANGELITA
DELGADILLO
CHRISTOPHER ELAM
ALLISON FORD

Articles Editors
MELISSA BACK
BRENT BENEFIT
JEFFREY GHAUSE
OLIVIA MCDANIEL
LAUREN MITCHELL

KIMBERLY GONZALEZ
KEVIN GRUBBS
CRISTAL JAMISON
CHRISTOPHER TEJEDA

OLIVIA MCDANIEL
LAUREN MITCHELL
THOMAS HIESBERER
ALEXANDER NGUYEN

CHARLES MURNANE
HEATHER NALE
LANI PAYNE

JASON RICHARDS
JAMES ROBERTSON

OLIVIA MCDANIEL
LAUREN MITCHELL
THOMAS HIESBERER
ALEXANDER NGUYEN

JASON RICHARDS
JAMES ROBERTSON

MICHIELLE PUTMAN
JASON RICHARDS

JASON RICHARDS
JAMES ROBERTSON

MANAGERS OF BUSINESS DEVELOPMENT

MANAGER OF BUSINESS DEVELOPMENT

TALIBRA FERGUSON
Administrative Assistant

—Editorial Base—
Southern Methodist University Dedman School of Law
Dallas
Law and Business Review of the Americas

Honorable Editor-in-Chief
PROFESSOR ROBERTO MACLEAN
President, SMU – LIA

Editor-in-Chief
JOSEPH J. NORTON
SMU-Dallas

Associate Editors-in-Chief

MAURICIO BAUERO-HERRERA
Columbia

JORGE M. GUIRA
London-Warrick

MARCOS AURÉLIO P. VALADÃO
Brazil

NARA PORTO
Dallas-Brazil

—BOARD OF SENIOR PROFESSIONAL EDITORS—

DIEGO C. BUNGE
Buenos Aires/SMU-Dallas

OMAR GARCIA-BOLIVAR
Washington D.C.-Caracas

JORGE A. GONZALEZ
Dallas

ROSARIO SEGOVIA-HEPPE
New York

ANTONIO PEÑA
Miami

LAWRENCE B. PASCAL
SMU-Dallas

—SMU FACULTY ADVISORY BOARD—

Chair
GEORGE MARTINEZ

GAIL M. DALY
CHRISTOPHER H. HANNA
JOHN S. LOWE

MICHAEL LUSTIG (POL.SCI.)
DANIEL J. SLOTTJIE (ECON.)

MARC I. STEINBERG
PETER WINSHIP
L. MIKE WOOTEN (BUS.)
—ADVISORY BOARD—

—ABA Representatives—

Chair
JEFFREY B. GOLDEN

Canadian Committee
H. SCOTT FAIRLEY
BRIAN D. WALKER

International Investment & Development Committee
MELINDA N. HODGSON
IGNACIO JUAN RANDLE

International Trade Committee
MATTHEW S. DUNNE
MATTHEW ROBERT NICELY

Latin American & Caribbean Committee
GUILLERMO MALM GREEN
MARCOS RIOS

International Corporate Counsel Committee
RICHARD T. WALSH
THOMAS WERLEN

Mexican Committee
YVES HAYAUX-DU-TILLY
GUSTAVO A. SANTILLANA

—External Representatives—

DR. ERNESTO AGUIRRE
Washington, D.C.

DR. CARLOS GERSCOVICH
Buenos Aires

PROF. ANA MACLEAN
Lima

MR. LEE BUCHEIT
New York

PROF. BENJAMIN GEVA
Toronto

DR. HECTOR MAIRAL
Buenos Aires

PROF. DONALD BUCKINGHAM
Saskatchewan

PROF. MICHAEL W. GORDON
Gainesville

DAVID J. MCFARLAND, Q.C.
Toronto

LOUIS CAPIN
Mexico City

DR. WILLIAM C. GRUBEN
Dallas

RONA R. MEARS
Dallas

PROF. EM. BEVERLY MAE CARL
Santa Fe

DR. EVA HOLZ
Montevideo

DANA G. NAHLEN
Plano

PROF. MARSHA ECHOLS
Washington D.C.

LAWRENCE JOHNSON
Dallas

HON. MIGUEL OTERO
Santiago

PROF. TOM J. FARER
Denver

PROF. BORIS KOZOLCHYK
Tucson

PROF. JOEL P. TRACHTMAN
Boston

MANUEL GALICIA
Mexico City

DR. LEONCIO LARA
Mexico City

PROF. LEON TRAKMAN
Australia

PROF. FRANK J. GARCIA
Boston

SERGIO LEISECA
Denver

PROF. STEVEN T. ZAMORA
Houston

DR. ALEJANDRO M. GARRO
New York-Dallas

PROF. CYNTHIA C. LICHTENSTEIN
Boston

OFFICIAL CITATION


Nothing herein shall be construed as representing the opinions, views or actions of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors or of the Section of International Law and Practice of the Association unless first approved by the Section or its Council.
Established in 1952, the Law Institute of the Americas at Southern Methodist University Dedman School of Law was originally designed to promote goodwill and to improve relations among the peoples of the Americas through the study of comparative laws, institutions and governments respecting the American Republics, and to train lawyers in handling legal matters pertaining to the nations of the Western Hemisphere. Today, in reviving this institution, the Law Institute of the Americas comprises meaningful academic research, teaching and programs pertaining to the "NAFTA/FTAA processes" and other Western Hemispheric integration efforts; to Latin and Central American law and judicial reform, particularly focusing on Argentina, Brazil, Chile, Guatemala, Mexico, Peru and Venezuela; and, to a more limited extent, to Canadian legal issues, particularly as they interrelate to the NAFTA/FTAA. The Law Institute of the Americas also is concerned with increasing (regional and hemispheric) legal and economic interconnections between the "NAFTA/FTAA processes" and European and Asia-Pacific integration activities.

The officers of the Institute are as follows: the Honorable Roberto MacLean, President; Professor Joseph J. Norton, Executive Director; and Professor George A. Martinez, Associate Executive Director. The Institute is also supported by a distinguished group of Professorial Fellows, Senior Research Scholars, Professional Fellows, and Student Research Fellows.

As the Institute focuses primarily on issues pertaining to the North American Free Trade Agreement and the pending Free Trade Area of the Americas, and the broader economic, political, legal, and social integration processes underway in the Western Hemisphere, Law and Business Review of the Americas is one of its publications, and is produced jointly by the Law Institute of the Americas and the International Law Review Association of SMU. Other parties involved in the production of the journal are the SMU Cox School of Business, the SMU Departments of Economics and Political Science, the London Forum, and the American Bar Association Section of International Law and Practice.

* From 1952 through the early 1970s, the name was the Law Institute of the Americas; in 1993, it was reactivated as the Centre for NAFTA and Latin American Legal Studies; and in 1998, it returned to its original name. For further detailed historical information on the Law Institute of the Americas, please refer to the Law Institute of the Americas' website at http://www.law.smu.edu/lia.
Perspective