Federalism & Free Trade:
Will trade rules affect local government?

International Municipal Lawyers Association
MinneapolisHilton ~ October 13, 2003
Work Session III ~ 10:15 a.m. – Noon

Preliminary Outline

Format

The panel will identify municipal powers that are affected by trade rules and the ways that municipal lawyers can advise trade negotiators in Washington and Ottawa. The panel is a round-table format with explanations of international rules followed by case examples and discussion among the panelists.

Panel participants

Moderator ~ Thomas Kelty, chair of IMLA Federalism Committee
Matthew Porterfield, senior fellow, Georgetown University Law Center
Merita Hopkins, Corporation Counsel, Boston, MA
Donald Lidstone, legal advisor to the Federation of Canadian Municipalities, Vancouver, BC
Veronique Pluviouse-Fenton, legislative counsel, National League of Cities

Overview of discussion

1. **Introduction – local interests in the global negotiations**
   a. Why do seven local government associations urge "no greater rights" for foreign investors?
   b. Which international negotiations affect local concerns?
   c. What are the most significant international rules?
      - Foreign investor rights – expropriation and minimum treatment
      - Trade in services – domestic regulation, market access and national treatment
   d. How are investment and trade rules enforced?
   e. How can negotiators safeguard local authority?

2. **Foreign investor rights – the takings debate goes international**
   a. Sovereign immunity – Boston's experience in *Mondev v. United States* (the US won)
   b. Land use and permits – *Metalclad v. Mexico* (Mexico lost)
   c. Oversight questions – Do proposed agreements give greater rights to foreign investors regarding–
      - Expectation of future profits?
      - Partial takings such as moratoria on development or high-impact land uses?
      - Privatizations or "public private partnerships"?

3. **Trade in services – the debate on deregulation and privatization**
   a. Water services and public-private partnerships – Vancouver's experience
   b. The most local global agreement – the range of local concerns includes –
      - alcohol distribution, cable TV franchise conditions, commercial zoning, construction, electricity services, gaming facilities, health facilities, water and wastewater services
   c. Oversight questions – Do proposed agreements give greater rights to foreign investors regarding–
      - Trade rules on domestic regulations that cover local licensing, qualifications and standards?
      - Trade rules that cover delivery of local utility services?

4. **Future consultation with trade negotiators**
   a. Experience of the FCM – Federation of Canadian Municipalities
   b. Experience of the NLC – National League of Cities
   c. TBA