

*Food Fight:
the Fruit and
Vegetable
Dispute
Resolution
Corporation*

Student Name: Tammy Smith

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Article 2022(1) of the *North American Free Trade Agreement* commits the treaty's signatories to promote, to the best of their abilities, expeditious means of dispute settlement among private commercial parties in their

jurisdictions. One recent innovation in this regard is the tri-national Fruit and Vegetable Dispute Resolution Corporation (FVDRC) created in May 2000 and located at the Experimental Farm in Ottawa. Apart from constituting a remedy for disputes between agents in North America's sensitive perishable produce market, the Corporation is a significant development in the privatization of dispute resolution that merits a preliminary examination and analysis.

The FVDRC is essentially a creature of conflicting tendencies: on the one hand constitutional impasse, on the other continental integration of perishable produce markets. These tendencies, which led to the genesis of the FVDRC, embrace aspects of international trade, international business, constitutional and contract law.

The FVDRC derives its creation from the *NAFTA*. In particular the *NAFTA* Article 707 requires that

[t]he Committee [on Agricultural Trade, established in Article 706] shall establish an Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprising persons with expertise or experience in the resolution of *private* commercial disputes in agricultural trade. The Advisory Committee shall report and provide recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods. [emphasis mine]

The FVDRC results from efforts on the part of the North American produce industry and the governments from Canada, Mexico and the United States to create an organization able to assist in the resolution of private international disputes.

But what spurred the need to create such an organization? What prompted those negotiating the *NAFTA*, an agreement between governments, to incorporate an article dealing with private commercial dispute resolution regarding agriculture? Of what benefit is the corporate structure? These issues are examined in this paper from a Canadian perspective. In order to properly delineate these issues the events leading up to the FVDRC's creation must first be articulated.

Background Regarding the Constitutional Division of Powers

Canada is a federalist nation. The *Constitution Act, 1867* provided for a division of legislative powers between the federal government and the provinces. The federal government has the exclusive authority to regulate in areas such as trade and commerce. This includes the regulation of international and inter-provincial trade. It does not include the regulation of *intra*-provincial trade, which falls to each province to regulate unilaterally.

For constitutional purposes the meaning of intra-provincial trade and commerce was elucidated in the *Reference respecting the Farm Products Marketing Act*. For our purposes the court in *Manitoba (Attorney-General) v. Manitoba Egg and Poultry Assn.* adopted three points from the Justices' reasons in the *Ontario Reference*. First, "individual contracts for the sale and purchase of goods in a province do not engage federal power under s.91(2) where any applicable provincial legislation relates merely to the terms of the contract." Further, the "regulation of the marketing, or the processing and marketing of products in a province for consumption therein is within provincial competence." Finally, the "regulation of the marketing of provincial produce intended for export or sought to be purchased for export is beyond" the competence of provincial power. Essentially only the provinces have the power to legislate in respect of contractual relations and marketing products, produced and consumed, within the province.

Canada Agricultural Products Standards Act

One of the principal pieces of legislation promoting the constitutional role of the federal government set out in s.91 (2) and as articulated in the *Ontario Reference* is the *CAP Act*, which has been in place since 1955. Its general purpose was to establish fair and ethical standards for trade in agricultural products and further to effectively regulate both national and international sale of those products. To this end specific provisions were set out in the *CAP Act* such that the Governor in Council could issue regulations to effect certain purposes. These purposes included

- i) the terms and conditions of grading, marking and inspecting of products, and fees and regulations pertaining thereto;
- ii) the prohibition of importation into or of exportation out of Canada, or the conveying or sending of such products from one province to another, and regulating the carriage of such goods;
- iii) the licensing of agricultural products dealers in any province or the importation into or exportation out of that province from any point outside of the province, and the cancellation and suspension of such licenses and the prescribing of fees payable for same;
- iv) the seizing, detention and disposal of any agricultural products.

Notwithstanding its important and far-reaching role, the *CAP Act* had no provision for the constitution of a board of arbitration, nor did the *CAP Act* contain any provision allowing for the delegation to any outside body or to an employee of the Department the right to determine the composition of such a board. However, s.31 of the *Produce Licensing Regulations*, promulgated to govern agricultural products, provided that there *shall* be a board of arbitration. The resultant ambiguity between the *CAP Act* and the *Regulations* laid the foundation for the Steve Dart Company to apply for a writ of prohibition against the Board of Arbitration.

Steve Dart Co. v. Canada (Board of Arbitration)

The Steve Dart Company dealt in agricultural products pursuant the *CAP Act* and the *Regulations*. On receiving a shipment of corn from a U.S. dealer, the Steve Dart Company advised the shipper that because of the poor quality they were requesting that Canada's Department of Agriculture inspect it. An inspection was carried out and subsequently the shipper filed a formal complaint with the Department of Agriculture claiming non-payment. The Board of Arbitration advised the Steve Dart Company that it must pay the shipper's claim or file a notice contesting the claim. Instead the Steve Dart Company applied for a writ of prohibition claiming

that the *Regulations* issued pursuant to the [*CAP Act*], insofar as they [purported] to set up the [Board of Arbitration] and to provide for its composition, for the granting to it of judicial or quasi-judicial powers and ... for the making by it of findings as to issues of liability arising between individual parties and for the enforcement of such findings, are *ultra vires* in that the [*CAP Act*] does not provide authority for any such *Regulations* to be made.

The court noted the divergence between the *CAP Act* and the *Regulations* regarding the formation of a Board of Arbitration. It held that there was no statutory authority for constituting the Board of Arbitration and that the writ of prohibition should issue for that reason alone. Later in the judgment Addy J. discussed those specific regulations that provided for the setting up of the trial and appeal tribunals in the form of the board of arbitration. He further noted that the *Regulations* also set out a "procedure to try the merits of any complaint" and "to grant awards of damages arising out of such claims and to enforce the awards by automatic forfeiture of license in the event of non-compliance of an award." However, the Court held that there was no statutory authority for such a system under the *CAP Act*. In a scathing conclusion Addy J. stated that the "exercise of a power to revoke a license in order to enforce a finding as to a claim between individuals which the [Board of Arbitration] has no statutory power to make is an *abusive and illegal use of such power*." As a result of the *Steve Dart Co.* decision in 1974, therefore, the Board of Arbitration set out in the *Regulations* no longer had any power to regulate the agriculture industry.

The federal government made various attempts at legislating to fill the adjudicative vacuum left in the wake of the *Steve Dart Co.* decision, but failed. The most likely rationale behind the failure is found in the closing comments of the Federal Court in *Steve Dart Co.* Addy J. stated that

[e]ven if all of the provisions contained in the *Regulations* were actually embodied the [*CAP Act*], it may still be argued successfully, having regard to the fact that such extensive powers in a board of arbitration would not really be required to properly administer the provisions of the [*CAP Act*], that the purported granting of such powers might constitute an infringement of the property and civil rights

provisions contained in section 92 of the [*Constitution Act 1867*].

Despite this observation in *Steve Dart Co.* the Court declined to consider the deeper constitutional issue. Hence, it appeared that the only thing that remained to be done was to seek an agreement with the provinces, given that any Board of Arbitration's power would deal with a matter of provincial competence. Because contractual relations, as noted above, are substantially a matter coming under provincial authority, the provinces would either have to cede power to the federal government or collaborate with the federal government and all of the other provinces and territories such that national legislation could be enacted on this issue.

Post-Steve Dart Co.

Following *Steve Dart Co.* relations in the agriculture industry appeared to deteriorate into uncertainty. This was because the only real Canadian mechanism available in an intra-provincial or any contractual dispute, whereby a shipper or producer could get paid, was the courts. Unfortunately the sale of produce, such as fruits and vegetables, does not easily lend itself to litigation because of the small amounts of money in issue and the perishable nature of the product. Consequently many disputes went unresolved and private trading relationships - intra-provincial, inter-provincial and international - soured.

Nowhere was this souring more evident than in relations between American producers and Canadian buyers. Currently the greatest portion of agricultural trade, between the United States and Canada, is in fruits and vegetables. Although the level of trade in fruits and vegetables is not as high today as prior to the *NAFTA*, they are still significant. The ever-increasing level of agricultural trade, coupled with the significant deterioration in private commercial relations, provided the impetus for negotiation of Article 707 of the *NAFTA*.

Perishable Agricultural Commodities Act

Prior to discussing the approach followed of the Advisory Committee it may be useful to summarize the U.S. system on perishable produce, the *Perishable Agricultural Commodities Act*. It was enacted in 1930 with a similar mandate to the *CAP Act*, that is the promotion of fair and ethical trading practices in the fruit and vegetable industry. With few exceptions, U.S. law requires buyers and sellers, trading in the fruits and vegetables, have a *PACA* license. The license is revocable if the licensee is found involved in unfair trading practices.

Essentially the *PACA* addresses disputes within the U.S., amongst U.S. traders. It is also available to U.S. importers to resolve disputes with, for our purposes, Canadian and Mexican exporters and *vice versa*. However, the *PACA* is of little benefit to U.S. exporters involved in disputes with Canadian or Mexican importers. The only option open to a U.S. exporter in such a situation, beyond some kind of totally voluntary negotiations, would be recourse to the Canadian or Mexican judicial system. As litigation is usually an expensive and time-consuming process, this option is of little efficacy.

Because of the *PACA*'s inability to address disputes that U.S. exporters encountered with Canadian and Mexican importers and the consequent inability of both Canada and Mexico to efficiently deal with such a dispute, industry began looking for a way to fill the void. A new round of trade talks began in anticipation of creating a North American free trade zone including Canada, the U.S. and Mexico. This round thus appeared to be the perfect opportunity to address the dispute resolution deficiencies, within the projected free trade zone. The agricultural industries of the three countries lobbied their respective governments to negotiate into the *NAFTA* what is today Article 707, with the expectation that the Advisory Committee's recommendations would effectively bridge the gap.

Status of Mexican Legislation

"Prior to *NAFTA*, Mexico's importation of agriculture products was somewhat arbitrary. The U.S. wanted Mexico to create a more regularized, formal and transparent system for which products they would and would not allow into the country. Since *NAFTA*, Mexico has made significant progress in making their agricultural import system more consistent." "Well before *NAFTA* was negotiated, Mexico embarked on a serious effort to modernize its agricultural sector. Early in the 1990s, Mexico... eliminated import and export licenses." Mexico appears to have

been serious in its attempts at creating certainty and stability within its agricultural sector prior to the *NAFTA* negotiations. However, this certainty has yet to occur. Mexico has yet to promulgate legislation akin to the U.S. *PACA* or the Canadian *CAP Act*.

The North American Free Trade Agreement

As noted above, Article 707 was negotiated into the *NAFTA* and mandated the creation of the Advisory Committee on Private International Disputes Regarding Agriculture. The Advisory Committee was to generate recommendations for the development of territorial dispute resolution mechanisms in respect of the perishable produce industry. For the Canadian, American and Mexican governments this fit with their policy.

At the time of negotiation only the U.S. had a viable system of dispute resolution in respect of perishable produce. "In Canada, domestically and internationally, the produce industry [labored] under a system that [did] not address most of the disputes arising between buyers and sellers. And in Mexico, there [had] not been any system to cope with domestic or foreign disputes." In essence only the dogged determination of industry and its lobbyists brought this matter to the fore with the result being the inclusion of Article 707 into the *NAFTA*.

Advisory Committee on Private Commercial Disputes Regarding Agriculture

The genesis of this committee was important because the nature of the agriculture industry, especially the fruit and vegetable industry, made it especially prone to dispute. Essentially there were a multitude of buyers and sellers dealing in highly perishable goods through a diverse marketing chain covering potentially great distances. At the outset the Advisory Committee decided to focus on addressing discrepancies in the Canadian, American and Mexican systems regarding the resolution of disputes arising from private commercial transactions in fruits and vegetables. As the Western Growers Association (WGA) noted the Advisory Committee would "examine the full spectrum of fruit and vegetable issues and [would] serve as a focal point and unified voice for the industry."

The Advisory Committee comprised members from both industry and government in each of the three countries. Initially the Committee divided the process of creating a common adjudicatory mechanism into two phases. In the first phase the members identified industry requirements and objectives, while development of recommendations for consideration by the respective governments was left to the second phase. Phase one was completed in April 1996 when the Advisory Committee promulgated its Terms of Reference. According to the Terms of Reference the main issue facing the Advisory Committee was the identification, facilitation, promotion and utilization of alternative dispute resolution methods, specifically arbitration. As noted *supra* the Advisory Committee identified the fruit and vegetable industry as one that would particularly benefit from the use of alternative dispute resolution.

The drafters of the *NAFTA* envisioned, from the inception of the Advisory Committee, that their recommendations would be consistent with their original mandate and objectives. This element was key. As such the Advisory Committee's recommendations were not to mirror systems already in place. The dispute resolution mechanism was to complement the systems already in place. The "[k]ey elements [included] the formation of an organization operated and supported by industry, and the maintenance of a list of participating firms which trade across borders within the free trade area." The Advisory Committee focused on developing a mechanism that would provide a service where there was a gap; essentially the gap was in the area of resolution of contractual disputes. As one of the members of the Advisory Committee often noted, the idea behind the mechanism was to ensure that the parties to a transaction *getting paid*. In the end the Advisory Committee recommended the creation of a corporate entity known as the FVDRC.

Fruit and Vegetable Dispute Resolution Corporation

The FVDRC is a corporation having a corporate structure akin to most corporations. Within this structure are the FVDRC's mandate, membership provisions, dispute resolution process, enforcement mechanisms and relationship to other *NAFTA* partners are delineated in detail.

1) Corporate Structure

To the above ends the Fruit and Vegetable Dispute Resolution Corporation was incorporated in 2000 as a non-profit corporation under the *Canada Business Corporations Act*. A Board of Directors, currently composed of leading figures in the produce industry that were heavily involved in creating the corporation, oversees the operation of the FVDRC. The appointment of the Board of Directors in such a way was done to provide consistency between the process of creating and the process of overseeing. However the board will be elected from the FVDRC membership after two years of operation have passed.

It must be said that given the role of government in heavily regulating the agricultural industry, the corporate structure does not immediately come to mind as the most viable mechanism for dispute resolution. But, given Canada's constitutional issues this appears to have been the only effective mechanism available to address disputes, particularly especially in light of the federal government's inability to regulate private contractual disputes and its further inability to regulate intra-provincial disputes, discussed above.

2) *Mandate*

"The FVDRC is mandated to deal with all types of disputes including condition, contract and payment issues. ... Its mission is to provide the North American produce industry with the trinational policies, standards and services necessary for resolving disputes in a timely and cost effective manner."

To ensure compliance with this mandate potential members must contract with the FVDRC to become members. This contractual relationship requires that members adhere to the *Mediation and Arbitration Rules of the Dispute Resolution Corporation*. These rules require that regular members

agree that *any* dispute, controversy or claim with a regular or an associate member, arising out of or in connection with any transaction involving fresh fruits and vegetables as defined in the by-laws of the Corporation *shall* be resolved *exclusively* in accordance with these Rules ...

Associate members are also required to resolve disputes exclusively in accordance with the *Rules*. Further, the *Rules* "apply to any dispute, controversy or claim between a member and one or more non-members where the parties agree in writing to their application." Members may access the courts where the dispute is with a non-member who has not agreed to the application of the *Rules*. Access to the courts is also sanctioned where the member is

seeking interim, injunctive relief to prevent dissipation of assets covered by the *PACA* trust or from seeking interim relief from a court of competent jurisdiction in appropriate circumstances pending resolution of a proceeding before the Corporation.

In effect the *Rules* put in place a mandatory mechanism for the resolution of disputes. This mechanism is not to be circumvented, except in respect of temporary measures, as a condition of membership. As such the mandate set out by the FVDRC may be accomplished and thereby benefit the membership.

3) *Membership*

Currently in Canada there is a two-year phase in period with the old mandatory licensing system being wholly deregulated in 2003. In the wake of the old system it is foreseen that the FVDRC will have a purely voluntary-based membership in the FVDRC. The two-year phase in enables current license holders to voluntarily migrate to the industry-run FVDRC. It also provides industry with a backdrop of familiar regulatory services while the transition is underway. Only those dealers opting to retain their old licenses will be governed by the *Licensing and Arbitration Regulations*, with those opting to join the FVDRC being subject to its rules.

Membership is open to any grower, buyer or seller of produce in the United States, Mexico and Canada. "In Canada and Mexico, it is expected that all traders would want to join because the DRC offers a valuable service not available anywhere else."

As noted above, there are two forms of FVDRC membership, regular and associate. The regular membership is

open to all buyers, sellers, brokers and commission merchants of fresh fruits and vegetables whose place of business is in North America. Regular members are covered for all transactions with other regular members or associate members. An annual membership fee of \$535 U.S. is required. The associate membership is open to all buyers, sellers, brokers and commission merchants of fresh fruits and vegetables whose place of business outside of North America. Associate members are covered for all transactions with regular members, but are not covered in transactions with other associate members. Both regular and associate members are required to pay an annual membership fee of \$535 U.S.

4) DRC Process

The *Mediation and Arbitration Rules of the Dispute Resolution Corporation* came into force on 23 October 2000. These rules provide for an escalating process of dispute resolution. They further set out an expedited process for resolving disputes where the value of the claim is less than \$15,000 U.S. This is a six-stage dispute resolution process. Initially, the parties to a dispute are educated in respect of their rights, remedies and obligations. From there the disputants may engage in unassisted negotiations and problem solving. If they require assistance, coaching and consultation assistance in the form of advice, case analysis, information and counseling, are available at the third stage of the process. As the dispute continues to escalate an informal mediation mechanism is engaged. At that point all parties must forward supporting documentation to the FVDRC who facilitate the exchange of information such that a resolution may be reached. Failure of the informal mediation moves the process into formal mediation for claims of \$15000 US or more or expedited arbitration for claims of \$15000 or less. With expedited arbitration a third party determines a binding settlement. The formal mediation process requires an assigned mediator to attempt to gain a voluntary settlement from the disputants. If this fails the disputants proceed to a formal arbitration process, similar to the expedited arbitration, whereby a third party determines a binding settlement.

In order to bring a dispute the claimant must bring the action under the *Rules* within nine months of the claim arising or of the time the claimant ought to have known of the existence of a claim. There is no fee involved in commencing the dispute resolution process unless one of the parties is a non-member. In such a case a non-refundable commencement fee of \$750, payable by the non-member, is required. For those claimants able to take advantage of the expedited arbitration procedure, claims less than \$15000, the claimant must pay a \$500 non-refundable commencement fee. In the award the arbitrator is to determine and award liability for costs. If the dispute escalates to the point where the formal arbitration option is activated, the arbitration will move ahead pursuant to the *CAMCA Rules*. At that point a non-refundable filing fee and a per party hearing fee are payable. These fees range from a low of \$450 US and \$150 US respectively for a claim of \$10000 or less to a high of \$7000 US and \$250 US respectively for a claim between \$1000001 US and \$5000000. Costs are to be fixed by the arbitrator in the award.

Both the *Rules* and the *CAMCA Rules* make similar provision for the selection of arbitrators. Regarding the selection of arbitrators the *Rules* provide that "[u]nless the parties have agreed to the selection of a particular arbitrator, the Corporation shall, within five (5) days of receipt of the Statement of Claim, appoint an arbitrator from its panel of arbitrators." Similarly the *CAMCA Rules* provides for the parties to mutually agree on the appointment of an arbitrator. However, if the parties do not agree on an arbitrator and do not agree on a method of appointment, the CAMCA administrator shall send both parties an identical list, of persons chosen from the multi-national CAMCA panel, from which they may strike objectionable arbitrators and preferentially rank acceptable arbitrators. It is from the parties' selections then that the administrator shall invite the appropriate number of arbitrators to serve. If the parties continue to disagree the administrator shall have the power to make the appointment from among other members of the panel without submission of additional lists.

Location of the arbitration is a further issue delineated in the *Rules* and the *CAMCA Rules*. Pursuant to Article 23.1 of the *Rules* the place of arbitration under the expedited arbitration procedure "shall be the place of the principal office of the Corporation" at the Experimental Farm in Ottawa. This is the default unless the parties agree otherwise. According to the *CAMCA Rules* the place of arbitration should be designated in the contract or agreed to in writing by the parties. Failing designation or agreement, the party commencing the arbitration shall notify the administrator of the desired place of arbitration. Both parties are then given a period of twenty days to submit arguments regarding the place of arbitration to a neutral locale committee. The committee will then make a final and binding determination as to where the place of arbitration shall be.

Overall these dispute resolution processes have been set up to ensure timeliness and cost-efficiency. They are an attempt at avoiding the gridlock of the domestic courts and the expense of protracted litigation.

5) *Enforcement*

When a settlement is reached in the mediation process or when an arbitration award is imposed, the spotlight turns to compliance with the settlement or award. If the award is not complied with, there must be an enforcement mechanism. The FVDRC provides two mechanisms of enforcement. First, if an award or settlement is not complied with the rogue member may be expelled from membership. Also, the award or settlement can be registered in the appropriate court because Canada, the U.S. and Mexico are each signatories to the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, which provides for the enforcement of arbitral awards through domestic courts. A further deterrent, possibly having greater effect than either of the two mentioned, is the FVDRC plan to publish the names of members who fail to comply with the settlements or awards. In the interest of maintaining the perception of one's good business practices, it would seem that a member would comply if only to keep from being labeled with the stigma of a defaulter.

6) *Position of Case Law*

The FVDRC is compiling a body of case law that is to be made available to its members. It may be that as decisions accumulate they will provide clear direction to future disputants such that potential disputes could be concluded in a declaratory manner almost before they began.

7) *Mexico*

The FVDRC faces a complex situation in trying to make inroads into Mexico. Essentially the Mexican industry needs to see services before they will believe in and make efforts toward any new system. Canada and the U.S. however need to see a system in place before extending their efforts too greatly to Mexico. Recently the FVDRC Board established a strategy to build its membership in Mexico. "The key elements of the strategy centered around finding and working with key Mexican industry representatives from the various sectors of the industry across Mexico." It is hoped that over time, by focusing on selected potential members of the industry, the two groups will incrementally develop a trust that allows them to put in place a viable system.

Future Considerations

At this point the FVDRC's mediation and arbitration processes appears to be fulfilling the needs and expectations they were put in place for. The FVDRC may be useful as a model for other nations and organizations putting in place a dispute resolution program. Interestingly in discussions subsequent to the Canada-United States Law Institute Conference entitled *Sovereignty Revisited as Canada and The United States Enter the 21st Century* the FVDRC model was discounted. Glyn Chancey, of Canada's Department of Agriculture, pointed out the successes the Advisory Committee had in "bringing the parties, both government and industry, to the table and identifying on a very fundamental level what their mutual interests [were]." He noted that there was interests in each of Canada, the U.S. and Mexico that were better served and protected in the other's markets by the FVDRC. As a result "there is a very fundamental political incentive for the governments and parties to facilitate the process, and for industry to participate." He further noted that the FVDRC was a voluntary organization that could over time "establish a standard that could be reflected in national standards."

When Mr. Chancey inquired as to whether the FVDRC model could be generally applicable, Ms. Coffield, one of the speakers, rejected this idea. It was her contention that legitimate negotiation was a "far better way of achieving accommodations among different standards, rather than the dispute resolution model, which sometimes comes out a winner or a loser." Unfortunately Ms. Coffield's answer was less than satisfactory. In rejecting the use of the dispute resolution model she failed to recognize that legitimate negotiation forms the initial stages of the process. As Mr. Chancey noted, each party identifies their mutual interests on a fundamental level. It is the identification that moves the discussion and negotiation forward. And it is that forward momentum that may eventually bring the various positions into a mutually satisfactory resolution. Further, if negotiations respecting a standard broke down and arbitration was required, it would be an independent arbitrator enlisted to resolve the issue. In that situation the

participants do not necessarily come out winners and losers, there is usually some form of compromise arrived at by the arbitrator. Finally, it is a voluntary dispute resolution process. Ironically the voluntary aspect of the process is the gel that binds it. Each participant voluntarily works toward achieving a mutually acceptable resolution. By placing one's proverbial cards on the table each party has incentive to complete the process and accept the standard whether achieved through negotiation, mediation or arbitration. It's funny because all the dispute resolution model does is follow through on the negotiation, as such it attempts to resolve diverging standards. In the interests of efficiency and cost-savings I would think that the FVDRC model could have a significant role in enabling standards to be defined in the future.

One can only hope that an increasingly global society, interested in resolving private disputes, will embrace such proven models as an effective means for resolving conflicting issues, whatever they may be. It is only those values so integrally intertwined with the respective society that will be difficult, if not impossible, to resolve. But they are in a class not necessarily standardizable. At this point one can only note that the process is voluntary and not an attempt at usurping the fundamental character of a society.

Conclusion

Since the genesis of the FVDRC, those members involved in the exporting and importing of fruits and vegetables internationally, inter-provincially and intra-provincially have a greater degree of certainty. This process certainty also extends to growers, producers, buyers and sellers in the U.S. and Mexico. All members, whether Canadian, American or Mexican can rely on the private dispute settlement mechanism to ensure that any disputes that may arise in respect of a transaction are resolved in a timely manner. Certainly not all disputes will be resolved totally to the satisfaction of all parties, or of even one party. It is the mechanism that is important. And it is that mechanism that provides for input and negotiation from all parties. It is only if a dispute reaches an impasse that an independent arbitrator must finally impose a resolution. This model appears to be effective as a means of resolving disputes in a cost-effective and efficient manner. It avoids the previous governmental constraints and jurisdictional arguments. It is the business person's interests that are accounted for and reflected in this private commercial process.