

Thomas Jefferson observed that "it is the trade of lawyers to question everything, yield nothing, and to talk by the hour." Although we politicians share some of the same basic training, having been taught to question the status quo and not to yield in debate, you will be relieved to know that I do not intend to talk by the hour. Instead, and drawing on some of the comments I made last month to the Canadian Institute of Advanced Legal Studies at Cambridge, I would like to discuss briefly the remarkable reform in international trade relations that is unfolding before us.

Permit me to state three propositions. First, international trade rules are increasingly replacing power politics. Rules are providing the transparency and predictability so essential to business in a global economy. And you, as lawyers, can appreciate the significance of such a trend: more rules, by necessary implication, mean more interpretation, which in turn means more work for you. Second, the way we enforce these rules is also changing. Governments are now being forced to come to grips with the limits to their sovereign authority to shape domestic policy. This too has implications for the legal profession through the interplay of domestic and international authority. Third, while these two propositions mean that you in the legal community have a special role to play in helping this new rules-based system respond to the needs of global traders and investors, they also mean that you will benefit by this new system as freer trade in legal services comes to pass.

To begin, let's go back a little in time. The 1948 General Agreement on Tariffs and Trade, the GATT, was designed to address high tariffs, discriminatory quotas and other measures employed by Messrs. Smoot, Hawley and their benighted brethren in the U.S. Congress to "beggar thy neighbour" at the border. The GATT's rules did not reach, for the most part, beyond national frontiers and measures directly targeting imports and exports. Rather, they called for the reduction of tariffs and national treatment. They allowed countries to adjust prices at the border in various ways, for example, through temporary surcharges to protect domestic industry from import surges, or through antidumping or countervailing duties. GATT rules served as a transformer, a mechanism for reconciling the trade currents of exporting nations with those of importing nations. This role can be seen in the concept of "nullification and impairment," and the maintenance of a balance of advantages, which is at the root of the GATT dispute settlement procedure. Rather than emphasizing harmonization or addressing domestic policies, they ensured communication and conversion from one national electrical current to another, thereby making economic co-operation that much more efficient, avoiding blowouts and blackouts due to incompatible power grids. But they most emphatically did not reach into the domestic sphere to change the current, in the belief that by regulating what happened at the border alone, trade could be increased. This was not hospitable territory for lawyers but was virtually the exclusive beat of politicians, policy makers and economists.