

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

After due allowance for man's tendency to bemoan his present plight and to idealize the past, one may nevertheless venture that the early years of the present century saw the barriers to the free flow of goods, funds and persons across national boundaries reduced to an historical minimum. The temptation is strong to moralize for a return to the ways of our forefathers. For better or for worse, probably the latter, complete abandonment of trade barriers in favor of a Manchester liberalism seems not in prospect. This symposium therefore is concerned with the appraisal of the barriers erected by the expedients and nationalisms of our time, of the further restrictions which can be anticipated, abroad at least, from impoverished and socialized economies, and of the techniques for meeting these actual and prospective restrictions. The classic controversy between free traders and protectionists is avoided.

International Trade Barriers is a topic susceptible of a number of approaches, including the one which, while integrating with the economic and political factors, emphasizes the legal aspects, for barriers are erected on a legal framework of private, constitutional and international law. That nearly all the contributors to this symposium are lawyers is no accident, for it is the lawyer who comes directly to grips with the barriers that affect his internationally active client.

Barriers, however deplorable in particular instances, are rooted in some mental process and outlook more or less rational. Accordingly, this symposium opens with an article entitled "Analysis of National and International Aims and Interests in Trade" by Messrs. Riddick and Romita of the U. S. Chamber of Commerce. American as well as foreign objectives are discussed.

Commercial treaties have a formidable history of endeavor to eliminate some of the international discriminations. The nature, extent and efficacy of these treaties, as well as present-day needs, trends and prospects for meeting new-style barriers, are analyzed by Austin T. Foster, New York attorney and Chairman of the National Foreign Trade Council's Treaty Subcommittee, under the title "Some Aspects of the Commercial Treaty Program of the United States—Past and Present."

From certain Proposals published by the Department of State, as well as from movements within the United Nations, there are prospects that cooperation between nations may result in an international trade organization. Among the problems that such an organization must face is the type of restrictions imposed in recent times on major segments of the economy by private groups through the cartel system. Messrs. Lockwood and Schmeisser, New York attorneys, in "Restrictive Business Practices in International Trade" survey the cartel problem in the light of those Proposals and against the background of our own antitrust law and policy. Additional angles to

the cartel problem and to its significance for international trade are furnished by Mr. Wendell Berge, head of the Antitrust Division of the Department of Justice, in his article on "Cartels as Barriers to International Trade."

The next group of articles is concerned with specific legal provisions whereby discriminations against foreigners are effectuated or mitigated. Mr. Kurt Nadelmann, European attorney, in his "Legal Treatment of Foreign and Domestic Creditors" points out how foreign creditors fare in various nations in races of diligence and administration of debtors' estates. A brief survey of restrictions abroad on aliens, personnel and voting rights is presented by Mr. Phanor J. Eder, New York attorney, under the title "Some Restrictions Abroad Affecting Corporations." Expanding this same general area in an article on "Limitations Abroad on Enterprise and Property Acquisition," Messrs. Bonsal and Borges, New York City attorneys, present a discussion which includes such practical questions about restrictions abroad as factors to consider in choice of country, choice of methods of operation and organization and consequences of local registration.

The main thread running through this symposium is the impact of restrictions abroad upon the internationally active entrepreneur and investor. A practical and enlightened attitude toward those restrictions is offered by Messrs. Coudert and Lans, New York attorneys, in their treatment of "Direct Foreign Investment in Undeveloped Countries: Some Practical Problems."

Taxation affords exercises in discriminations, multiple burdens and, at times, inducements. Emphasis on the latter is indicated by Mr. Mitchell B. Carroll's article on "Tax Inducements to Foreign Trade," in which various types of relief from multiple taxation, both by unilateral action under our own income tax laws and by cooperation between governments, are explored. The reverse side of the picture is presented by Mr. Marcel Singer, whose "Some American Discriminations Against Foreign Enterprises" is mainly directed to federal tax law; pertinent constitutional law doctrines are considered.

The rise and significance of the twentieth-century techniques of import and export controls, aside from historical tariffs, are dealt with by Mr. Kenneth S. Carlston, New York attorney, under the title "Import and Export Controls."

Drawing upon his long experience in the importing and exporting business in general, and upon his arbitration experience in particular, Mr. Morris S. Rosenthal, Vice-President of Stein, Hall & Co., New York City, examines the potentialities that arbitration offers to the machinery for handling foreign trade disputes. His "Arbitration in the Settlement of International Trade Disputes" is a comprehensive survey of the tribunals available, the types of clauses used, the powers of arbitrators, and enforcement of awards and related matters.

The symposium concludes with the contribution by Professor Borchard, of the Yale Law School, entitled "Protection of Foreign Investment," in which are analyzed certain attitudes of international morality, the interrelation of trade with law and stability, and the significance of the new nationalisms and some of their supporting legal doctrines.

E. R. LATTY.