1972

International Business Transactions (May 15, 1972)

William & Mary Law School

INTERNATIONAL BUSINESS TRANSACTIONS (L62)

May 15, 1972 Professor Walck

1. The United States produces domestically only 10 percent of its copper requirements. The remainder must be imported. XYZ, ABC and UVW Delaware Corporations are importers and suppliers of 80 percent of the copper imported annually. These three corporations own the controlling stock of several foreign corporations which mine and refine copper and ship to the United States. XYZ, ABC and UVW purchase the entire output of said foreign miners and refiners. Despite the ownership of controlling interest in the foreign corporations by ABC, XYZ and UVW, those foreign corporations are independently managed by local nationals and a majority of their board of directors is made up of local foreign nationals. They have no offices or agents in the United States and their product is delivered to the purchasers F.O.B. at the mines.

Said foreign corporations joined with most of the rest of the world's producers of copper and agreed to limit production and set prices. There is no evidence that XYZ, ABC and UVW participated in those agreements or knew anything about them.

under its anti-trust statutes,
What action might the United States take, if any, and why?

2. The X Company is a corporation organized under the laws of Delaware and has its principal place of business in New York. It manufactures widgets and exports its entire production to foreign countries where it markets the widgets through wholly owned subsidiaries. Other American producers manufacture widgets and sell in the same foreign markets. X Company's subsidiaries advertise in the foreign markets claiming that X Company's widgets have been tested and approved by the United States Testing Service. The X Company owns and controls a small corporation organized under the laws of Nigeria and resident in Nigeria called the United States Testing Service. It was this corporation which tested and approved X Company's widget. There is evidence that foreign purchasers believe that the X Company widgets have been tested and approved by the United States Government.

May any action be taken against X Company and under what authority? If your answer is in the affirmative, what is the basis for U.S. jurisdiction?

3. Plaintiff (P) purchased television sets in Japan and shipped them to San Francisco aboard a British owned ship with British registry. The bills of lading signed in Tokyo purported to

exempt the carrier from liability for ". . . negligence of masters or mariners as to all damage arising from the goods by stowage and whether the loss or injury arising therefrom be occasioned by the wrongful act, default, negligence or error in judgment of the owners, masters, officers, mariners, stevedores, engineers . . . for whose acts the shipowner would otherwise be liable. . ." The bill of lading also contained the following clause: "This contract shall be governed by the law of the flag of the ship carrying the goods." Water and other fluids from improperly stored fish at a higher level leaked down over the television sets ruining all of the cabinets.

In Section 1 of the Harter Act Congress provided that common carriers, by land or sea, ". . . transporting merchandise from or between ports of the U.S. and foreign ports. . ." could not by any form of contract exempt themselves from responsibility from loss or damage arising from negligence in the loading or stowage of cargo.

P brought an action in the United States District Court for Northern California in San Francisco libeling D's ship and asked for damages for the negligent destruction of his property. British law would give effect to the provisions of the contract.

What result and why?

4. In July, 1972 Congress amended the Social Security Act to provide that all employees of U.S. contractors building military installations for U.S. forces in foreign lands would be subject to the act and that social security taxes would be levied against employee's salaries and that they would be entitled to all benefits of the act. The question has arisen as to whether the act applies to foreign nationals who are not citizens or residents of the country where a base is being built and secondly as to nationals of that country.

a. Does Congress have constitutional authority to legislate as to such employees in this manner? Why?

b. If it does, should the statute be construed as applying to those employees? Give reasons.

5. After the recent civil war between West Pakistan and East Pakistan (Bangledesh), many residents of Bangledesh were near starvation. The provisional government of Bangledesh contracted with suppliers in the United States for grain and other foodstuffs for shipment to Bangledesh to relieve the plight of its citizens. After a permanent government was formed the Prime Minister directed that the supplies not be paid for and announced that the provisional government had had no authority to commit his government to

this obligation. The suppliers, United States citizens, brought an action in a U.S. District Court on the contract. The Bangledesh Government forwarded a letter to the Department of State claiming sovereign immunity. The Department of State forwarded the letter to the Attorney General with no comment other than to request him to present it to the court. At the trial, attorneys representing the Bangledesh Government appeared and entered a plea of sovereign immunity. What result and why?

6. The Internal Revenue Service assessed a deficiency against appellant bank alleging that appellant had made an inadequate showing of its entitlements to deductions based on cost of doing business, depreciation, et cetera in relation to its foreign branches. Appellant sued in the Tax Court seeking a ruling that it had complied to the best of its ability. It presented testimony that the nations where it has its branches have penal statutes prohibiting it from releasing bank records necessary to prove and sustain the validity of the deductions. Twice, the Commissioner in the Tax Court directed the appellant to attempt to secure the approval of the foreign states for the release of the documents. In each instance, permission was granted for the release of some but not all of the documents which appellant contends will substantiate its position without question. There is no indication that further approaches to the foreign governments will be successful. The Tax Court directed payment of the deficiency. What result on appeal and why?

7. P, Coca Cola, and D, Hoka Cola, are both U.S. corporations engaged in marketing soft drinks. D applied for U.S. registration of its name as a trademark and registration was denied because it was found that there was a confusing similarity between the applicant's mark and P's mark. D then applied for registration of its mark in six South and Central American states and was successful in gaining registration even though P appeared with counsel and opposed registration. D bottles its product in a plant in Miami, Florida, labels the bottles with its foreign registered mark and ships the products to those countries where it is sold. None of D's product is marketed in the United States or any other country where it does not have a valid registration. P brings this action under the Federal Trade Mark Act for infringement of its registered trademark seeking an injunction and an accounting for profits and damages. What result and why?

8. The X Company, a British corporation, manufactured widgets from which it had a number of British patents. Its business was rather small and its sales have always been limited to Great Britain. The widget itself is not a unique product and competes with several similar products in the world market. In 1969, X Corporation licensed the Y Corporation, a small manufacturing company organized and doing business in New York, to use

X Corporation's American held patents in the manufacture of widgets. Y Corporation agreed to pay $5000 plus a 5 percent royalty on all sales. In addition, Y Corporation agreed to sell only in the United States and to require by contract that none of its purchasers export the widgets. X Corporation agreed not to export any of its widgets to the United States and to require by contract that none of its purchasers do so. The United States brings an action against both X and Y, alleging violation of §§ 1 and 2 of the Sherman Anti Trust Act, obtaining in personaum jurisdiction ~~which is~~ over X by serving an agent in New York. What result as to each defendant and why?

9. The Tariff Act of 1930 imposes a 30 percent ad valorem tax on widgets but provides further that if any country imposes a higher duty on widgets imported from the United States, then there shall be imposed a duty equal to that imposed by that foreign country when imported into the United States. P imported widgets from Italy which imposes a duty of 60 percent on widgets imported into that country. A 50 percent ad valorem was assessed and paid by P who appeals to the Court of Customs and Patent Appeals (Customs) seeking a rebate of 20 percent. He bases his action on an article in a Treaty of Friendship, Commerce and Navigation between the United States and Italy which provides:

> "Each of the high contracting parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce or manufacture, of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce or manufacture of any other foreign country."

What result in the C.C.P.A. and why?

10. Great Circle Airways (GCA), an American corporation, made application to the Civil Aeronautics Board (CAB) for authority to operate on certain routes between the United States and foreign countries. The Board with express approval of the President, issued an order denying GCA's application and gave the routes to a competing domestic carrier. GCA filed a petition for review under §1006 of the Civil Aeronautics Act with a U.S. District Court. All petitions for overseas air routes are required by the act to be submitted to the President for his approval before action of the Board is published. Also, the act subjects to judicial review all orders issued by the Board except an order respecting any foreign air carrier. It grants no express exemption to a petition such as the one involved in this case. Should the court grant GCA's petition for review and why?