

The banks and financial houses are already facing up to the likelihood of increased foreign representation; it may well be the turn of the lawyers soon.

#### Proposed Uniform Rules for Bank Foreign Exchange Contracts

At the request of the Basle Committee on Banking Regulations and supervisory contracts, the International Chamber of Commerce is presently in the process of drafting uniform rules for foreign exchange contracts, termed FOREXCOS, between banks including banks in different countries, and extending to third parties who take over or guarantee such contracts. Banks adhering to the rules will do so by the use of the abbreviation "IFEX" (International Chamber of Commerce Foreign Exchange Rules). Lists of banks adhering to the rules will be published. Of particular interest will be draft Article 8, which provides for liability on default "for any reason whatsoever, including force majeure or its inability to provide agreed currency funds as a consequence of local mandatory restrictions, but excluding insolvency ..." (Editor's emphasis). This draft article might overcome the decision in Allied Bank International v. Banco Credito Agricola de Cartago 566. F.Supp.1440 (SDNY 1983) where newly imposed exchange control restrictions were held to be an Act of State and the defendant thereby escaped liability. Note, however, the contrary decision in Libra Bank Limited v. Banco Nacional de Costa Rica 570 F.Supp 870 (SDNY 1983). See casenotes.

Liability extends to the net loss of interest and net cost of covering the FOREXCO. Claims must be made "not later than three months after the relevant value dates: ICC, 38 Courts Albert Premir 75008 Paris, Commission on Banking Technique and Practice, Document No. 470/414.

#### Exchange Control Trial

On 5 December, the trial of 57 clients and five former executives of Paribas began in Paris. It is alleged that they were involved in a scheme to avoid exchange control. Among those on trial is M. Pierre Moussa, who took action to ensure that Paribas Swiss company would legally escape French nationalisation measures: The Economist 10 December, 1983, 81.

D.P

#### SHIPPING

The UNCTAD code for liner conferences came into force in October, 1983: The Economist, 26 November, 1983 at 84. The most controversial provision is for governments to have the right to reserve for their national lines a proportion of conference cargo on bilateral routes. Although not express, the proportions are generally taken to be 40 per cent for each of the two national lines leaving only 20 per cent for other lines. However because of opposition to the code, the Economist predicts the code's provisions will only affect 7 per cent of world liner trade. Because of a restructuring of the industry and technological advances, the journal argues that the conference system which will emerge "... will bear little resemblance to the one which provided the UNCTAD liner code".

D P

#### TRADE BOYCOTTS

In November 1949; a group of Western powers established a co-ordinating committee, called COCOM, to co-ordinate the deprivation of the Soviet Union and her allies of strategic imports from the west. COCOM has no formal charter, and is not part of NATO, although all NATO members and Japan are associated. What disturbed the major European allies of the U.S. in 1982 was that the attempted U.S. imposed boycott of Western exports for the Soviet European gas

pipeline was not the result of a eastern consensus. COCOM however is still active. In November a West German appeals court reversed a refusal by a Hamburg judge for a search warrant of the Swedish container ship Elgaren due to berth in Hamburg on its way to the USSR. The search produced U.S. computer equipment for guiding vessels and tracking troops valued at US\$2.5 million: Time 28 November 1983, 17. Action under the boycott in the U.S., U.K. and Sweden, as well as disagreement in COCOM is noted in The Economist 17 December, 1983, at 43.

#### GATT SUBSIDIES CODE

Nearly all industrial countries are committed to the 1960 Declaration Giving Effect to the Provisions of Article XVI: 4 of the GATT whereby export subsidies on industrialized products are prohibited. Non signatories, especially developing countries are free to use export subsidies provided these are notified. Subsidies of agricultural products are subject to a different regime - they are not subject to remedy unless they garner "more than an equitable share of world trade" based on a "previous representative period" GATT Article XVI: B - a difficult provision to interpret as seen in the sugar dispute between Australia and the EEC. Under U.S. law, countervailing duties could be imposed on any subsidized imports. Under the U.S. Tariff Act, 1930 proof of "material injury" was not a prerequisite for the imposition of countervailing duties. In the Tokyo Round, the U.S. accepted the insertion of this prerequisite in the new Code in return for EEC acknowledgement that subsidies ostensibly for domestic purposes, as well as export subsidies, are subject to the new regime. (GATT Code on subsidies and countervailing Duties). Most developed countries including Australia are signatories to the code.

Singapore is now reported to be considering acceding to the code to forestall the imposition of countervailing duties by the U.S. on the import of certain refrigerators manufactured in Singapore. These duties may be presently imposed without the proof of "material injury". Signing the code will ensure that "material injury" must be proved; however, signing the code will leave open the potential examination by the U.S. authorities of all manner of domestic subsidies e.g. tax holidays, investment allowances etc. This will be of interest to Australian companies which have been attracted to invest in Singapore for these reasons. The question also illustrates the maturing of the Singapore economy and the effect this may have on its status in international economic law. In a number of areas - trade, export credits, finance - special regimes apply to those who have the status of a developing country.

D.F.

#### THE LAW OF THE SEA

The refusal of the United States to sign the UN Convention on the Law of the Sea, and her earlier enactment of sea bed mining legislation followed by that of other technologically advanced powers have set the theme for a major argument in international law which at some future time may be the subject of a request for an advisory opinion of the International Court of Justice. The economic importance of sea bed mining cannot be underestimated. Four metals of major commercial interest are found in the manganese nodules which have been discovered on the sediment surface of the sea at depths greater than 6,000 feet. The most valuable deposits are believed to lie in the low latitude areas of the eastern and central Pacific. All nodules of economic interest are found in areas beyond the limits of national jurisdiction. All of the four metals are of considerable importance to the U.S. Manganese is essential in the production of steel, and nickel is essential in the production of stainless steel and high performance alloys. Present reserves on land will expire in 51 years. Cobalt is used for the production of sophisticated electro magnetic devices used in communications and control systems; known land reserves will