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FOURTH ANNUAL SYMPOSIUM EXPORT TRADE

Introduction

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The flow of trade and investment between the United States and foreign countries has been a part of our economic landscape for more than a century. The continuing trade deficits in the United States, however, have encouraged many domestic producers to find innovative ways to improve their economic performance in the world marketplace.

One of the major impediments to the free flow of international commerce is the multitude of laws that potentially govern such activity. A good illustration can be found in the area of antitrust. The role of United States antitrust laws in regulating the marketing and distribution of products in the United States is generally well understood by United States business. The extra-territorial reach of these laws, however, as well as the scope of foreign anticompetitive foreign laws, such as Articles 85 and 86 of the Treaty of Rome, is a much less familiar, yet equally important topic. A United States company doing business within the European Economic Community (EEC), for example, can encounter serious consequences if it ignores EEC treaty law. Moreover, the company may encounter additional problems under the anticompetitive laws of the member state since EEC treaty law preempts only inconsistent laws. The potential application of domestic and foreign antitrust laws to the outward-bound United States business is the subject of the commentary by James P. Kleinberg.

The multitude of laws that govern international business transactions has given rise to proposals for achieving at least a minimal amount of uniformity. One of the more important current efforts in this area is the United Nations Convention on Contracts for the International Sale of Goods. The Convention was adopted on April 10, 1980, and represents the culmination of a fifty-year effort to coordinate the laws gov-

erning international sales contracts. The American Bar Association, in its statement recommending ratification of the Convention, noted that the proposal will provide a compromise for contracting parties struggling over choice-of-law and choice-of-forum clauses, and permit them to shape their agreements without fear of encountering "mandatory" local rules. The Convention, its prospects for ratification and impact on foreign trade are the subject of Professor Peter Winship's commentary.

The multitude of laws, along with the language barriers and cross-cultural problems that affect many international business transactions, increase the probability of misunderstandings between the contracting parties. A United States party doing business in Europe will usually have some experience with dispute resolution in the United States but little knowledge of such matters in Europe. The European party to the contract, on the other hand, will be familiar with local forums and rules but unfamiliar with United States practices.

Arbitration gives the contracting parties, within the four corners of their agreement, an opportunity to specify in advance the procedure for settling differences that may arise between them. The commentary by J. Sorton Jones will explore the use and misuse of arbitration in international business agreements.