

January 1988

## Discussion after the Speeches of James R. Sharpe, John Coleman and James D. McNiven

Discussion

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

 Part of the [Transnational Law Commons](#)

---

### Recommended Citation

Discussion, *Discussion after the Speeches of James R. Sharpe, John Coleman and James D. McNiven*, 14 Can.-U.S. L.J. 259 (1988)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol14/iss/33>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## Discussion After the Speeches of James R. Sharpe, John Coleman and James D. McNiven

*QUESTION, Professor King:* I have a question for John Coleman. One of the problems with the OEDC Credit Arrangement is the question of its legal status. For example, you catch one of the members of the group violating this Arrangement and getting the sale. What happens? What is the process to bring about conformity among the members of this group? Is it just goodwill or self interest? Have there been any cases where the Arrangement has been violated?

*ANSWER, Mr. Coleman:* I suppose there have been, and Jim Sharpe may want to add to what I have to say because he is involved in all of the cases and I am a step removed from all of the agencies. As I said earlier, there are really two ways in which we act on one another in this Arrangement. One is through the prior notification and consultation and exchange of information procedures. These are supposed to avert any departures from the rules. If it seems clear that a participant is going to depart from the rules, then consultation and notification is supposed to take place early enough so that others can match that departure from the rules.

That is the main sanction: the matching sanction. If people do depart from the rules, and this becomes known as it must through the notification procedures, then it is a question of group pressure and a question of putting the country on the mat, if you like, in one of our periodic meetings of the Arrangement and asking it to explain its practices and justify why it departed from the Arrangement.

The only other thing to add is that I have the impression that countries are constantly pressing at the edges of the Arrangement looking for advantage. If it becomes known after a certain time that everyone is tending to move in a certain direction, away from the existing rules, then the natural reaction in the Arrangement is to change the rules so that they conform to the new practice and hope that everybody abides by those. Did you wish to add something, Jim?

*COMMENT, Mr. Sharpe:* John, you summarize it very well. Being right on the firing line of this issue, I would like to say that we seldom see blatant violations of what we have characterized as a "gentleman's" agreement because it does exert a great deal of peer pressure on the countries. All of the notifications and accusations are addressed in front of all the other members of the OECD Consensus, so it is given a high degree of visibility.

I would mention, however, when we see this constant testing at the

edges, and adhering to the absolute letter but not to the spirit of this relatively short agreement, it does get a lot of people excited. Just within the last two weeks the U.S. Government got excited enough about a specific case where it issued a diplomatic note containing fairly strong language. It is usually something you do when somebody runs their tanks across your border, and kidnaps your people and so forth, so that does tend to get attention.

*QUESTION, Mr. Robinson:* As one that has had a pretty high profile, I wonder if you are at liberty to tell us in a practical sense the answer to the second bridge in Istanbul? What was the answer of the Japanese to the British and others as to why notification is considered third class C mail?

*ANSWER, Mr. Sharpe:* This was an alleged violation of the Consensus. The Bostrows Bridge, which is a large bridge across the Bostrows River in Turkey, is the third bridge that is being built. The bridge that preceded this one was the subject of last minute throwing of aid at a commercial project. It got into quite a mutual finger pointing exercise, primarily between the United Kingdom and Japan.

That issue rose to the heads of state. It just got that contentious. But this question of notification is probably the area that is the most violated, certainly in accordance with the spirit that goes with the rule. The excuses for violating it normally are, "Gosh, I didn't know about it," "My Embassy kind of went out and they didn't really check with the home office," or "My exporters are making these offers hoping the government will back them up but we really hadn't made the offer yet," or "We forgot," or "We have a general line of concessionary credit out to a country and that recipient country hasn't told us that they want to use that aid for this particular project."

*QUESTION, Mr. Sherman:* I have the impression that American companies in the small- and medium-size range have begun to export in the last year or two in significant quantities of goods, and I just wonder what your impression is on that subject. Obviously if you have any figures they would be welcome, but if you do not I would like to know what your comments are.

*ANSWER, Mr. Sharpe:* I do not have any figures. We have representatives from the Department of Commerce here, and they might have some figures. The number one priority at the Export-Import Bank is to find ways of reaching out to small- and medium-size exporters. We are finding as we go out around the United States that the level of interest is rising rapidly on the part of small- and medium-size would be exporters.

On the other hand, our ability to reach those exporters to educate them, to advise them and to provide our services is very limited. The Export-Import Bank has a total staff of 350 people, all located in Washington D.C. At the same time, the principal intermediaries that we have counted on over the years to reach out between us and the U.S. exporter

is the commercial banks in the United States, who are retreating in mass from trade finance. Their trade finance departments are being disbanded, and their board of directors and credit committees are refusing to take any significant crossborder risks, having been severely burned in the Latin America crisis.

We do have small- and medium-size exporters who do not have the clout that Boeing and General Electric have, who need to find financing assistance and other assistance to become more active and competitive, yet the U.S. banks retreating from the field. That is the reason we are looking to State and city export development activities as another means of reaching out to those exporters.

*QUESTION, Mr. Robinson:* My first question was a set up for this one. This is to John Coleman. I gather from what I read that the Export-Import Bank has now approved, in principle, the build to ownership ("BTO") models for export financing. It is also my impression that it is an exciting possibility and we are going to see a lot more countries stressing and utilizing it. What is your attitude to BTO, based on the Turkish model? Would you encourage it?

*ANSWER, Mr. Coleman:* There is generally, and I am speaking not for Canada but for most of the Consensus countries, a growing acceptance of the idea of BTO arrangements in appropriate circumstances. The U.S. Export-Import Bank has helped everyone by making available to all of us the financing model that it used for a BTO project in Turkey.

The issues have always been: can you make sure that you have an adequate government guarantee behind the project? Can you make sure that if you are involved in a power station, for example, that you are going to be able to charge remunerate rates over the period that you own the project? Are you going to be able to transfer the proceeds outside the country in order to collect the repayments? I do not think that there was ever any opposition in principle on the part of Canada to the concept. It was more a question of can one design it in a way that will ensure that there is effectively a government guarantee for repayment and transfer behind it, and can one be sure that you will not be put in a position where rates are frozen in Turkey for ten years and you lose your shirt.

It was a practical problem. We had some interesting and rather painful experiences with this two or three years ago when we were considering whether or not we should build a nuclear power station in Turkey. We were not able at that time to get satisfaction on these points. Neither were the other countries most interested in the project, notably West Germany, and we all withdrew in the end from the project. The U.S. model BTO agreement was devised after the experience we had.

*COMMENT, Mr. Stayin:* Can I just comment on the Foreign Trade Zone Act? The Foreign Trade Zone Act was passed in the 1930s to stimulate exports to the United States, and the idea was that the foreign parts can come into the trade zone, be incorporated into a product and be

shipped out of a trade zone to a foreign port. You would not pay any duty on the product and, therefore, you would save money. What has happened, though, is that virtually every auto plant in the United States is a foreign trade zone now. They bring the imported product into the foreign trade zone, incorporate it into the automobile, and when it leaves the foreign trade zone into U.S. domestic commerce, the automobile rate of tariff is applied to the part, which is roughly one-half to one-third of the automobile part rate.

We had this thing facing us two years ago. Some bicycle parts manufacturers and Huffy, the biggest bicycle company in the United States, wanted to have its plant turned into a foreign trade zone. We sort of stalled it at Commerce, but Commerce basically grants foreign trade zones to everybody who asks for one because they go to Commerce and say, "Well, if you don't give us a foreign trade zone, we'll open a plant, take our product overseas and we will assemble it there."

What we had to do was get legislation passed which created the first exemption in the foreign trade zone treatment to a particular type of product: bicycle parts. It saved the bicycle industry because otherwise Huffy would have been using this artifice to bring in the imported product. Interestingly, Huffy still makes bicycles in the United States. It did not move offshore. That is a good story with a good ending, but the automobile parts industry is in serious trouble. That is where all the volume has happened. Every automobile plant in the United States is a foreign trade zone now.

*COMMENT, Dr. McNiven:* On the Canadian side, there are no foreign trade zones. With all due respect to Mr. Coleman, I have had a lot of tussles with some of his colleagues over why we cannot have a foreign trade zone in Sidney, Nova Scotia and the answer is "because." I think the real answer, if you push a little harder, is because everyone else would want one, and why would you want one anyway? If you push a little harder what you start finding out is there is a fear in southern Ontario that all of a sudden there would be a rash of zones right along the border and automobile companies would bring parts in from the United States and use low cost assembly here.

Consequently, we end up with a really weird situation in terms of trying to promote foreign investment into Nova Scotia or any other province, because you cannot sell "zones" like you can in who knows how many other countries. Everybody understands the zones, but they do not really understand the way Canadian customs do things.

We are frustrated, but in another way we understand.

*COMMENT, Professor King:* I want to thank Jim Sharpe, John Coleman, and Jim McNiven for a very enlightening session. You stirred up a lot of questions. I do not know whether we have had the answers, but you have given us food for thought.