

AN INTERNATIONAL TRADE TRIBUNAL

By

HUSTON THOMPSON

Former Chairman, Federal Trade Commission

[REPRINTED FROM THE PROCEEDINGS OF THE THIRTY-FOURTH ANNUAL
MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW,
WASHINGTON, D. C., MAY 13-15, 1940]

THIRTY-FOURTH ANNUAL MEETING
 OF THE
 AMERICAN SOCIETY OF INTERNATIONAL LAW
 THE CARLTON HOTEL, WASHINGTON, D. C.

FIRST SESSION

Monday, May 13, 1940, 8:15 o'clock p.m.

The opening session of the Thirty-Fourth Annual Meeting of the American Society of International Law, held in the Carlton Room of the Carlton Hotel, Washington, D. C., convened at 8:15 o'clock p.m., the Honorable Cordell Hull, President of the Society, presiding.

President HULL. The Thirty-Fourth Annual Meeting of this organization will come to order. The Chair recognizes the Secretary, Mr. Finch, for the purpose of making a statement.

Secretary GEORGE A. FINCH. Mr. President and members of the Society: Owing to the importance of the occasion, it has been thought advisable to have the presidential address broadcast over a national hook-up, and in order to do that it is necessary that he speak at nine o'clock. We ask your indulgence to vary the program so that the speaker who was to follow our President will speak first.

President HULL. I now have the satisfaction of introducing to you an old-time personal friend of mine, an outstanding citizen, an outstanding lawyer, and an outstanding civil and political leader, the Honorable Huston Thompson.

Hon. HUSTON THOMPSON. Mr. President, ladies and gentlemen: I welcome the honor of being on this program with our distinguished Secretary of State. Today he is universally described as the most selfless person in American politics. Had it not been for his victory with the reciprocal trade agreements, accomplished by his matchless courage and supreme patience, one might hesitate to broach anything of a constructive nature in this destructive hour, but he has instilled in us the confidence to go on.

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Amid the encircling gloom that envelops the world it is more than a privilege to meet in peace with guests from the only other continent that is not ablaze with war or destruction. It is noteworthy, too, that we gather not for the purpose of planning for destruction, but to seek again some prac-

tical machinery for lessening the possibility of still another ride of the Four Horsemen.

Since changes in human nature are so slow as to be almost imperceptible, it is safe to say that most of the nations where the struggle is on, will come forth from this debacle as they did from the last one, with treasuries so depleted that self-preservation will drive them again in the wrong direction unless there is a purposeful and helpful plan at hand. There is reason to believe that nations singly, together, and individuals in groups, will again turn toward dangerous nationalism, will demand increased tariffs, will put forth quotas, and do all of the things that block the channels of trade.

The key to all modern, if not ancient, wars has been greed in one form or other. To eradicate greed is an effort of the ages, not generations. It is for this reason that while we approach our problem hopefully we must expect to move gradually, ploddingly, and realistically. To be realistic we must recognize that strategy dictates an approach to the business relations of peoples rather than the politics of nations. Therein has lain the supreme mistake in the efforts of mankind to correct the past.

From Carthage down to the present, the one universal medium for the exchange of ideas has been through the commerce of the world. It is the only common denominator. Even the flag follows trade rather than trade following the flag. To focus properly, then, on peace we must throw the searchlight on international commerce, so that the masses of the world even more than governments and classes, can see, understand and become articulate as to what transpires.

Despite the fact that international business groups, often encouraged by their governments, have choked the channels of commerce through the use of cartels, combinations, tariffs, quotas, division of territory, price fixing and a free-for-all fight for the other fellow's market, there has been practically no representation on behalf of the common man. In fact, he has had no more consideration, as the ultimate consumer, than is given to Mr. Caspar Milquetoast of comic strip fame. I do not mean to say that there has not been much thought and effort put forth by high-minded groups of men on movements that would lead to raising the international welfare of the common citizen in the respective countries, but it has rarely gone beyond the fringe of the problem and seldom beyond the resolution stage, and the common man has not been among those present.

More than fifty years ago, at a conference in Paris in 1883, the United States became a party to a Convention for the Protection of Industrial Property, to protect patent and trade-mark rights and prevent the misbranding of goods; this convention has been several times revised, but is still in effect. In 1902 certain European countries joined in a convention for the suppression of bounties on the production and exportation of sugar, and formed an international bureau which was in operation until the World War. In more recent years, there have been numerous economic conferences in

Europe, as well as Pan American conferences, where plans were considered and measures drawn up for the elimination of trade barriers and the promotion of good will in international trade relations. Out of all of these experiences has come a realization of the need for something more, which I believe to be not a temporary conference or a convention limited in scope to one problem or one set of circumstances, but a permanent organization with broader and more flexible functions, designed to cover all forms of unfair trade practices in international commerce, and to meet trade conditions as they may arise in the future. This I have termed a World Trade Tribunal.

If, after the last war we could have had time, before creating the League of Nations, to arrange a system that could have checked those acts which blocked commerce and led to nationalism, it is quite possible that the League would have had a much greater chance of success. If we could have had a working system for bilateral or multilateral agreements for the gradual reduction of tariffs; if nations could have agreed with each other that instead of encouraging the raising of prices to their respective ultimate consumers they would let the law of supply and demand function; if there could have been an arrangement whereby money values between nations were fixed on a reasonable and logical basis; if there could have been an understanding that each nation should have its proportionate quota of raw materials, what a different world we would have had in the last twenty years. But it was not possible under the circumstances to formulate such a world at that time, for nations and peoples were drifting. International politicians were busy with their own ambitions, with the boundaries of countries, with the punishment of enemies that perhaps deserved some penalties but not too many or too severe. Political action was demanded in order to stave off chaos. In such an atmosphere the real causes of war and plans for peace were almost lost sight of.

I have said "almost lost sight of." But tucked away in Article 23 of the Covenant of the League of Nations is an unused, simple statement of eleven words which contains great potentialities for the future of the peace of the world, had it been permitted to function among normal human beings. These eleven words declare for an "equitable treatment for the commerce of all members of the League." To make these words live, would have required, as we have pointed out, thought, preparation, and action, but there was no time for any of these.

Behind these eleven words is the following incident. On May 5, 1919, as a member of the Federal Trade Commission, I wrote President Wilson at Paris, a letter setting forth in detail reasons for believing it necessary to incorporate in the League a provision for a World Trade Tribunal. In the letter I cited instances of unfair methods in international commerce that would cause serious friction and that could not be successfully reached by nations individually. On May 23, 1919, President Wilson replied, expressing the hope that such a tribunal might eventuate, and that the plan sug-

gested become a reality, at least in part. On Mr. Wilson's return to Washington he called my attention to the phrase heretofore quoted from the Covenant of the League, and stated that he thought that this language was a sufficient foundation upon which to build a World Trade Tribunal.

It may be asked why we need a Trade Tribunal when we already have the League of Nations and the World Court. Experience has apparently determined that aside from non-controversial matters the League will remain essentially political. Trade disputes or conflicts cannot be settled in a political atmosphere. To understand this we need but compare the handling of a controversial subject by Congress and by a tribunal created by Congress but divorced from its direct control. An example in point is the investigation made several years ago of the power interests of the United States, which was begun by our Senate but finished by the Federal Trade Commission. On the floor of the Senate there was political attack, maneuver and recrimination. When the same subject was transferred to the Commission, that body, without ostentation or irritation, revealed a picture of conditions that created a public opinion which suggested legislation and action with salutary effect.

The League may initiate economic investigation, but it cannot well decide economic conflicts. In 1927 it called a World Economic Conference which met, resolved and adjourned. The defect in such a conference is that the delegates are usually instructed in advance and are so rigidly controlled by such instructions that they are not free to act, or when they desire to do so, they have not the machinery. On the other hand, a permanent World Trade Tribunal, having its membership selected non-politically much as the members of the World Court, being withdrawn from a political atmosphere and functioning in a quasi-judicial manner on controversial matters, and in a spirit as impartial as the members of the World Court, can act with comparative independence.

The World Court does not handle matters such as would come before this tribunal, for its jurisdiction is over political matters arising between nations rather than economic matters arising between individuals of nations.

If there was excuse for postponing the consideration of international economic problems twenty years ago, it does not exist today in the western hemisphere. We are now in an extraordinarily advantageous position for future economic planning. We now have time in which to devise a concrete plan that can be subjected to criticism, amendment and improvement before it is put into action. Already there has been set in motion the system of bilateral treaties introduced so successfully over the world by Secretary Hull. Thus one objective is now in the making. As for machinery to handle reciprocal credits, exchange control, stabilization of currencies and other money problems, the report of former Premier Paul van Zeeland of Belgium, as of March, 1938, on *International Economic Reconstruction*, points the way. This is in line with resolutions at Pan American conferences for establish-

ment of a "permanent international agency" to effect reduction of trade barriers.

There is left what is perhaps the most difficult and far-reaching problem of seeking to eliminate the schemes and methods by which great groups, frequently supported by nations, seek to and do control and choke the channels of commerce despite the fact that tariff barriers may have come down and exchange rates arranged.

Imagine this present war over, a mad scramble for markets, and copper selling at a world price of 8¢ per pound. Tomorrow morning there is a meeting in Brussels of all of the copper interests of Europe and Africa. They know what production they have on hand. They determine to raise the price, but they don't want competition from our continent. So at the same hour, on their initiative, a meeting is held in New York City of the copper interests of this hemisphere. A cable from the Brussels group says that the price of copper in Europe today will be 10¢ a pound and the American interests may have a proportion of the contracts at the price named. Now assume that the American interests accept the terms and establish the same price in the western hemisphere. With this proposal repeated day by day the price advances until it reaches 24¢ a pound. At that price a buyers' strike takes place and the world ceases buying copper. A closing down of the mines follows all over the world with thousands already unemployed directly, and millions indirectly unemployed. How can individual governments handle such a situation?

Let us suppose that we had a World Trade Tribunal. The fabricators—the next lowest plane in the competitive world—of France, Germany, Sweden and the United States, banded together, could call upon their governments or in the event of their governments refusing, could ask the Trade Tribunal to initiate an immediate hearing before which the producers would be asked to appear. As one of the functions of the tribunal would be to gather current world data on production and stocks on hand of the leading raw and manufactured materials, its investigating force could very rapidly assemble this information for a hearing. Would it not put the fabricators and other distributors and consumers on an even plane with the producers so far as market knowledge is concerned? The possibility of such an investigation, a hearing before the tribunal, a finding and reporting of the findings on an international radio hook-up and a direct communication to the proper officials of the governments interested would have such potentialities that the cartels and combinations would hesitate before challenging an exposé by the tribunal.

We might pause here and consider not only the fabricators, wholesalers and distributors, but also the "Caspar Milquetoasts" the world over, who, in the last analysis, bear the burden of the acts and practices of the cartels. It has been positively amazing how effectual has been the manner in which the state of the markets when fully exposed trickle down from fabricator to

wholesaler, to retailer to ultimate consumer, to set up a buyer's resistance. Such a situation might exist in almost every line of industry where there is a cartel price control or division of territory. The very fact that a tribunal was keeping up currently, and giving out monthly, and internationally, such information, by radio broadcast, would certainly be a prophylactic in the international business world just as it has been when certain of our government commissions have been unfettered in informing our American people.

A World Trade Tribunal could be invaluable to tariff-making bodies of respective governments. Especially ought it to be so to the Congress of the United States. Let us assume that we know accurately how much butter is being shipped to the United States annually from Denmark, and also from the rest of the world at the time when this war ends. Assume that Germany then has not the buying power to take over all the butter that is now being shipped from Denmark. Denmark in seeking a market for this small surplus ships 3,000,000 or 4,000,000 pounds for sale over here. Let us suppose an outcry of fear from our farm organizations against this move, even though the United States may produce 95% of our domestic consumption and the Danish shipment would not be over 1% of our consumption. Responding to the butter producers, Congress is about to increase the tariff on butter.

Assume that the cattle of Denmark consume more of our cottonseed cake than any other foreign market in the world. At the same time Germany produces a great deal of flaxseed cake which it would like to sell and which would make a substitute for cottonseed cake. If the cottonseed producers had made a demand upon Congress when it was about to increase the tariff on butter, for a call on the tribunal to report on the effect of this tariff increase, and the tribunal had revealed the fact that if the tariff on butter were raised, the farmers of Denmark would likely purchase German flaxseed in place of American cottonseed cake, is it difficult to imagine that there would have been no tariff increase?

If the pitiless publicity through an international radio and transmission to the various tariff-making or law-enforcing bodies of the respective nations did not succeed in correcting action in the market place, then hearings could be had upon the initiation of either nations, groups of nations, the League of Nations, the World Court, or of groups such as fabricators or consumers in groups of nations.

It may well be asked how the international public could become articulate before such a tribunal. The approach to other tribunals, such as the League and the World Court, has been through nations. But before a World Trade Tribunal we might have groups that would cut completely across nations and who might be contesting for their protection before a tribunal against interests in the same nations.

For example, suppose the question of the restriction of territory, the output and the price of tea were involved. Today, perhaps, the largest tea distributor in the world is in London. It is a great cooperative organization

which has international connections as far north as Finland. It supplies many of the consumers of these other nations who belong to consumer societies. This great tea distributor not only distributes but produces some of its tea. Consumer societies generally, however, do not go into production unless they are forced to. If, then, a cartel should clamp down upon a commodity in such a way as to raise the price, restrict production and divide up territory, a complaint could be lodged before such an International Trade Tribunal either through the nations of those complaining, or, in the event the nations refused, upon a proper showing by these interrelated consumers' groups. There would be little difficulty in having them come together for the reason, and I speak advisedly on this, that even when nations are bitterly hostile to each other there is a spirit of friendliness and coöperation between their consumers' societies throughout Europe that is completely above national lines and could be made a remarkable tie in overcoming nationalistic drives if they were given sufficient encouragement. Should the complaint of such a group fail, even though the publicity given to such a hearing were successfully conducted, then, of course, the producers would know that eventually their consuming market would be diminished because the consumers would themselves go into production.

So far we have talked in a confident attitude, but I trust with no expression that would lead to the idea that such a tribunal would not meet with tremendous opposition in many quarters. Today, for example, the German nation is apparently dedicated to the cartel system of distribution, but the consumers of Germany are human, like those of other countries. If in peace times, when the air is free, the information could be given to Germany's consumers that their cartels were dumping articles at a much cheaper price in other countries and were putting the burden upon the domestic consumer, it would not be long before the consumer would be heard from, even in Germany.

The problem before an International Trade Tribunal would not be as to whether there would be lack of business to come before it. On the contrary, it would be how to restrict it. There would be price fixing to investigate, findings, reports to the respective governmental bodies set up for the purpose of considering economic interferences. There would be the suppression of quotas which Mr. van Zeeland, in his most valuable *Report*, recommends for extinction. There would be the wholesale theft of trade-marks and many other types of unfair methods or acts of competition. If the world returns to sanity after the present war, and nations agree to allow each other the necessary raw materials, this tribunal could be used to determine the quotas to be allowed.

Such practices have been so universal that no one people or groups of peoples or nations can point the finger of scorn or suspicion at any other. Moreover, the incentive seems so great and the temptation so strong that to reduce to a minimum these practices would mean years of exposing even in so

high-minded a nation as that of the Dutch people. Jules Backman, in *Commerce and Finance* of August, 1938, is authority for the following: He stated that it has often been said that the Dutch are a thorough people. When they finally decided to resort to the use of restriction schemes after years of opposition, they did a complete job. Their experience with the control of hogs is a case in point. The control provided for, among other things, a tattooing of the ears of the pig population in order to facilitate control over the marketing. When widespread counterfeiting of these tattoos occurred, resort was had to metal identification tags. The enforcement after that became more effective, but the problem of limiting the size of the pig population still remained. To solve it an unusual technique was adopted. The proportionate number of breeding sows was strictly limited. On the average, about one sow was permitted for every 14 pigs. This represented an ingenious device of birth control and illustrates the resourcefulness of the price fixers.

It would become necessary in forming a World Trade Tribunal to establish, first of all, the basis upon which cases would be determined, and second, machinery which could reduce to a minimum outside pressure. The yardstick upon which justice would be measured in such a tribunal could be the effect of the act, practice or method complained of on "the interest of the public." By "public" I would mean the respective publics of the nations involved. This test is not an original one. It has been applied now for twenty-five years by the Federal Trade Commission between conflicting groups in different states, existing under different climates and under different circumstances. This principle could be applied to trade the world over, without conflicting with the law of any nation. It is a principle based upon the thought that that which is best for the public welfare should be controlling in economic questions. Public welfare is something that would be understood by the masses in the respective nations. Moreover, it would be a fairly equitable common denominator or yardstick in all nations. Under such a doctrine the Federal Trade Commission has generally given great consideration to the position of the ultimate consumer since what is best for him is, in the long run, best for the rest of the public, including the business interests.

As the World Court's membership, composed of representatives of countries of dissimilar origin, character and background, is able to promulgate unanimous opinions, so it is submitted that the members of the World Trade Tribunal could harmonize their views on economic problems if guided by what was best for the public welfare of the masses rather than the classes. In order to eliminate a political atmosphere and to escape from pressure of special interests, the membership of the tribunal could be chosen along lines following closely the definitions of qualifications applied under similar conditions to the membership of the World Court. In the application of the membership in a case of an adversary proceeding where, except in case of

very great importance, a quorum of three could sit, the tribunal would be expected to make a selection of representatives of nations whose nations were not directly interested in the issue to be tried.

The tribunal would be open to non-member nations as well as to member nations, but non-member nations when referring a question to the tribunal would have to agree to accept the findings and to pay their share of the cost. Non-member nations could request current information and could ask that studies be made on any economic subject but would have to pay the costs. Under such a circumstance the tribunal itself should be able to initiate a proceeding. The Federal Trade Commission has found this plan very effective on a number of occasions, and as a result of proceedings initiated by it, has, from time to time, brought to light conditions which were not suspected and which were detrimental to the public welfare.

To avoid objection by isolationists, no nation would have to join the tribunal or have its nationals respond to a summons, nor would the tribunal issue more than findings and conclusions. But in the event that the nation or the nationals did not appear, the investigation could be carried on, evidence taken, findings prepared, and a hearing held before the tribunal. Thereupon the tribunal would make findings, file the same with the League of Nations, send copies to all of the nations interested and give the widest possible publicity to the same.

Under such circumstances it would be very difficult for a nation whose nationals were charged with an international combination to increase prices in combination with nationals of other nations, to avoid appearing before the tribunal, for the consuming public of the various nations interested would have something to say to their own governments in behalf of such a move.

I have reserved for the last what would be perhaps the most difficult factor in promulgating such a tribunal. It is the problem of obtaining the money to finance its expenditures. To have such a tribunal operate efficiently it would be necessary not only to have a central organization in some city, but there should be ten or twelve branches located at strategic points throughout the world. In order to act effectively, the tribunal's information would have to be kept current and publicized frequently. In other words, if after the present debacle the nations are not willing to subscribe annually about one half the cost of one battleship, then there would not be much inducement or hope for the success of a World Trade Tribunal.

If the tribunal could be launched with proper finances and it could be as effective as the Tribune of the people was in the days of Rome, it would be worth the trial. It will be recalled that the Tribune, who represented the public at large, had a seat outside the Roman Senate. In his capacity he was allowed at any time to enter the Senate on behalf of the people, to receive immediate attention, and to declare the attitude of the public. On his return from the Senate he would inform the populace and the populace

did the rest. Perhaps after some years of struggle such a tribunal might play a similar part in the international world.

The time I believe is ripe for a tribunal, to be considered and developed *now*, in preparation for the day when the European war shall end and the world will again be faced with the problems of reconstruction and trade adjustment. And may I repeat that in such a tribunal I see an instrument of peace, a means by which the nations of the world and the people of the world may be able to adjust their commercial differences without resort to force or arms, a means which should further good will among nations in the place of misunderstanding, bitterness and recourse to war.

