Boston College Law Review

Volume 4 | Issue 1 Article 14

10-1-1962

Trade Regulation

Philip J. Callan Jr

statutory language it is possible to get a result similar to that of New York whereby the buyer does not lose out on any payments made on his previous purchases.

The Michigan act provides a criminal sanction[33] for the "wilful" violation of the provisions of the act by the seller. This sanction gives little or no protection to the buyer who is the primary subject of the regulation. To prove that an action by the seller is wilful is not an easy task, and even if the seller is found guilty, the buyer is still left without a civil remedy.[34]

The Michigan statute leaves much to be desired in the regulation of subsequent purchases of goods. In its compromise to equalize the bargaining position of the seller and the buyer, the buyer needs more and gets very little protection and support. As the statute was passed within days of the adoption of the UCC, there should have been a more consistent relationship, especially where the Michigan statute is not affected by the repealer provisions of the UCC. If the unwary buyer is to receive much needed protection, a statute similar to that of New York would be more desirable.

EDWARD BOGRAD

TRADE REGULATION

The Tariff Classification Act of 1962, which provides for the adoption and implementation of revised tariff schedules, was enacted into law on May 24, 1962.[1] Although creating no rate changes the act attempts to simplify product classifications and to make them more consistent with present trade conditions. Under the act, as soon after the enactment of the legislation as is practicable, the President is authorized to take whatever steps he deems necessary to bring the several trade agreement schedules into line with the new tariff schedules.[2] This "conforming process will not involve changes in the new tariff schedules; the trade agreement schedules will be changed to conform to the new tariff schedules."[3] At the present time, the provisions under which the bulk of the import trade of the United States is classified for tariff purposes are "modified" provisions subject to "concessions made by the United States in foreign trade agreements and proclaimed by the President under authority of trade agreements

until all the instalment payments are completed. The New York statute clearly sets out a method of allocation which gives the buyer protection.

33 Supra note 16, at § 5.

34 The Model Retail Instalment Sales Act, supra note 25, provides civil remedies for the buyer as well as criminal penalties against the seller. Generally, a violation by the seller of a particular section will impose a penalty payment to the buyer of an amount equal to the first instalment payment. Sections 2(e), 3(b), 4(c), 5(b), 6(e), & 8(e). Section 16 provides a criminal penalty as well for any wilful violation by the seller of any section of the act.

1 Pub. L. No. 87-456, 87th Cong., 2d Sess., 76 Stat. 72 (1962).

2 The tariff schedules consist of the proposed schedules included in the United States Tariff Commission's report of November 15, 1960, as changed by the First Supplemental Report of January 1962.

3 9 U.S. Code Cong. & Ad. News 992 (June 20, 1962).

legislation."[4] Under the new act, as soon as the President has taken the action he deems necessary, he is required to proclaim the new schedules which will then become effective.[5]

The House, on October 4, 1962, passed the Administration's foreign trade bill,[6] the Trade Expansion Act of 1962, thus capping for President Kennedy his biggest victory of the 87th Congress. Under the bill, the President is empowered to cut tariffs up to fifty per cent in order to buttress our economy by extending his authority to negotiate for substantial and mutual tariff reductions with foreign countries, particularly the European Common Market and other trade blocs. The measure calls for the broadest tariff-making powers yet delegated to a President. Now headed for assured Presidential approval, the bill also contains a new program of "trade adjustment assistance," to domestic industries and workers injured by competition from increased imports of competitive products, through such means as job re-training.[7] This industry and personnel reorganization was necessitated by the United States' sagging international trade position. Without the tariff flexibility which the measure provides, this nation might have suffered the greater economic loss of a drop in the export market with resulting serious unemployment.

Senator Kefauver, Chairman of the Judiciary Subcommittee on Antitrust and Monopoly, recently introduced a bill[8] entitled the Drug Industry Antitrust Act.[9] On October 10, 1962, President Kennedy signed the bill into law.[10] The principal features of the bill would accomplish the following:

First. Insure greater Government supervision of drug manufacturers by (a) requiring every plant to be registered; (b) strengthening the inspection authority and requiring inspection of each plant at least once in every two years; (c) authorizing the seizure of a drug if, regardless of its quality, it is made under inadequate methods, facilities or controls.

Second. Require that a new drug be shown to be effective, as well as safe, before it is cleared for the market, and authorize withdrawal of such a drug from the market if new evidence shows it to be ineffective.

Third. Strengthen the authority to withdraw a new drug from the market on grounds of safety, and include a provision, in the event of an "imminent hazard to the public health," for immediate suspension from the market pending a hearing.

Fourth. Add to the existing authority of the Secretary of Health, Education and Welfare to issue regulations to control the testing of new drugs before they are placed on the general market, by giving him specific authority to require records and reports as to data obtained as the result

[4] Id. at 995.
[5] Id. at 992.
[6] H.R. 11970, 87th Cong., 2d Sess. (1962).
[7] 108 Cong. Rec. 18766 (daily ed. September 19, 1962).
[8] S. 1552, H. R. 6245, 87th Cong., 2d Sess. (1962).
[9] 6 U.S. Code Cong. & Ad. News p. xi (April 20, 1962).
[10] The very strong original bill proposed by Senator Kefauver was diluted by the Full Committee on the Judiciary on July 19, 1962. However, the bill was restrengthened as a result of a letter sent by the President to Committee Chairman Eastland of Mississippi. 108 Cong. Rec. 16306 (daily ed. August 23, 1962).

of investigational rise of, and clinical experience with, both new drugs and antibiotics.[11]

Another recent bill,[12] introduced by Senator Humphrey of Minnesota, would amend the Robinson-Patman Price Discrimination Act[13] by adding a proviso to Section 2, 15 U.S.C.A. Section 13.[14] Senator Humphrey stated that his proposed amendment would provide that

> functional discounts, heretofore considered permissive or discretionary, shall be deemed to be mandatory and required unless the seller, who fails to grant such discounts (to the wholesaler), can affirmatively show that such failure does not injure competition at any distributive level.[15]

Under the present business structure, small retailers are at a disadvantage in the competitive market where it is the practice among manufacturers of consumer goods to sell their products not only to wholesalers but also to large retailers at the same price. As a result, small retailers who must buy from the middleman wholesalers cannot compete with their larger brethren. This situation is contrary to the fundamental aim of antitrust law which is to insure free competition in commerce by legislating against all activities which significantly restrain competition or involve undue concentration of economic power.

Two proposed "quality stabilization" (fair trade) bills[16] were strongly denounced by both Chairman Dixon of the Federal Trade Commission and Justice Department Antitrust Division Chief Lee Loevinger who stated that the bills would create a federal system of resale price-fixing by granting prohibitive powers to owners of trade-marked or brand-name products. Under the measures, such owners would have the right to control the resale prices of their products. Specifically, an owner of a brand-name or trademarked product could preclude a dealer from handling his products if the latter did not agree to sell at the owner's established price, used bait advertising, or misrepresented the product.[17]

In June 1962, Wyoming joined the majority of states in which nonsigner clauses of state fair trade laws have been totally or partially abolished on constitutional grounds. Nonsigner provisions commonly state that any person wilfully and knowingly advertising, offering for sale or selling any commodity at less than the contract stipulated price, whether the person so advertising, offering for sale, or selling is or is not a party to such contract, is unfairly competitive. Any person injured thereby may bring action. The

---

[11] 108 Cong. Rec. 16303 (daily ed. August 23, 1962).

[12] S. 3255, 87th Cong., 2d Sess. (1962).

[13] 49 Stat. 1526 (1936), 15 U.S.C. § 13 (1958).

[14] This section makes it unlawful for any person to discriminate in price as between purchasers of his product when the effect is substantially to lessen competition in commerce.

[15] 8 U.S. Code Cong. & Ad. News, p. xi (June 5, 1962).

[16] S.J. Res. 159, H.R. 10335, H.J. Res. 636, 87th Cong., 2d Sess. (1962). S.J. Res. 159 was recently approved by a Senate fair trade subcommittee. Similarly, a House subcommittee approved for Interstate Commerce Committee consideration H.J. Res. 636, with amendments.

[17] Trade Reg. Rep., Pamphlet No. 38, p. 4 (June 5, 1962).

Supreme Court of Wyoming ruled that the provision[18] constituted an "improper delegation of legislative power, offended due process protection and was beyond the police power of the state,"[19] all in violation of the Constitution of the State of Wyoming. As the court noted, the pendulum of state decisions has definitely swung from the constitutional to the unconstitutional side.[20]

PHILIP J. CALLAN JR.

UNIFORM COMMERCIAL CODE

In Alaska, on April 16, 1962, the Uniform Commercial Code was signed into law and will become effective on December 31 of this year.[1] The Alaska version of the Code follows very closely the 1958 Official Text with only minor variations.[2] Recent months have also witnessed the legislature of Michigan enacting the Uniform Commercial Code, 1958 Official Text, effective January 1, 1964.[3] Kentucky, which passed the Code in 1960, has amended its laws to conform to the 1958 Official Text.[4] In Ohio the Code took effect on July 1, 1962, in accordance with its 1961 adoption.[5]

Undoubtedly, the most significant breakthrough with regard to the efforts of the National Conference of Commissioners on Uniform State Laws to obtain nation-wide adoption of the Code is the passage of the Uniform Commercial Code by the New York legislature. Effective in September, 1964,[6] the enactment represents the result of almost ten years of study by the New York Law Revision Commission which, as early as 1952, began taking testimony as to the wisdom of adopting the Uniform Commercial Code. In 1956 this commission made a voluminous report, and ultimately recommended that the Code be rejected at that time. Extensive recommendations were made by the Commission, many of which are directly reflected in the 1958 Official Text.[7] Mindful of the 1958 changes, the New York

[18] Wyo. Stat. Ann. § 40.14 (1957).

[19] Bulova Watch Co. v. Zale Jewelry Co., — Wyo. —, 371 P.2d 409, 420 (1962).

[20] Although decisions support this statement, several states have recently enacted corrective amendments to their fair trade laws. They provide that by accepting the goods with notice of the manufacturer's stipulations the dealer is deemed to have assented to the fair trade terms, and to have entered into an implied contract pursuant to those terms. Ohio Rev. Code Ann. §§ 1333.27 to .34 (Baldwin 1961); Va. Code Ann. §§ 59-8.1 to -8.9 (Supp. 1960).

In addition, Virginia recently eliminated the mandatory requirement that fair trade contracts contain a clause restricting the sale of the commodity, and replaced it with a provision authorizing a restriction on sales by the seller. Trade Reg. Rep., Pamphlet No. 31, p. 4 (May 14, 1962).

[1] Alaska Laws 1962, ch. 114.

[2] Bulletin of the Permanent Editorial Board for the Uniform Commercial Code of the National Conference of Commissioners on Uniform State Laws.

[3] Mich. Acts 1962, P.A. 174.

[4] Ky. Rev. Stat. §§ 355.1-101 to .9-507 (1955).

[5] Ohio Rev. Code §§ 1301-43 (Baldwin, 1962).

[6] N.Y. UCC § 10-101 et seq.

[7] For a full report of the degree to which the New York objections to the 1954 Official Draft were met by the 1958 Text, see the Report of the Association of the Bar of the City of New York on the Uniform Commercial Code, February 1, 1962.