

# Law and Global Trade Today

by Stuart S. Malawer, Special Editor

The similarities between the situations the United States finds itself in during this time of war and the last time the U.S. was engaged in major warfare are both instructive and unsettling.

In the 1960s and 1970s, the United States was engaged in decade-long military operations in Southeast Asia. Now it is engaged on several fronts in a seemingly never-ending conflict in Southwestern Asia. Then, the United States was led into war by dubious claims of events in the Tonkin Gulf. Today, claims of seemingly nonexistent weapons of mass destruction and ties to global terrorism rationalized our use of force. Then and now, rights of individuals were restricted by executive actions in the name of national security. At both times, questions of constitutional and international law concerning use of force and rights of prisoners were fiercely debated. The Middle East and Arab-Israeli relations were then and now in a state of turmoil. The U.S. then blamed the United Nations for ineffectual peacekeeping and U.S. relations with the U.N. and our allies were antagonistic. We continue to blame the U.N. for much of the ills of that region. Then, the global trading system through the General Agreements on Tariffs and Trade (GATT) attempted to address the global economy that had not yet fully entered the era of globalization. The World Trade Organization (WTO) today is attempting to deal with those discontented with globalization.

But of course, events have changed. The Berlin Wall and the Iron Curtain have disappeared. Terrorism, not Soviet T-55 tanks, threatens the United States. Throughout the 1980s and 1990s, the importance of law to foreign policy and international trade grew significantly. Today, law and litigation are of immense importance in the field of global trade practice. The Internet, global telecommunications, information technology, biotechnology and outsourcing characterize our world. Global trade today is composed of electronic commerce in bits and bytes. Transformations have occurred in the world of global trade and transnational business—core interests of the Virginia State Bar International Practice Section.

The tectonic shift of economic power from Europe to Asia raises questions about trade, politics and foreign policy. India and China now help drive the global economy. Technology and services are the growth engines of global commerce. The WTO replaced the GATT in global trade and transactions. A new dispute resolution system provides compulsory and binding decisions with enforceable sanctions to the world of international trade relations for the first time. This development of adjudication and litigation affects national sovereignty as well as enhances the efficacy of the trading system. It benefits many by ensuring compliance with trade rules and by discouraging unilateral actions.

Yes, critics abound. The WTO has become controversial within and outside of the U.S. as part of a growing antiglobalization sentiment. While many industries and firms have become global, growing protectionist pressures now emanate primarily from workers, local politicians and traditionally protected sectors. In addition to the WTO, newer areas and institutions have become critical to global transactions. In the wake of U.S. and foreign corporate scandals, the transnational issue of corporate governance has emerged as a critical aspect of international trade relations. Addressing concerns with the export and reexport control of technology have emerged as crucial to globalization. This issue now treats the intellectual property rights, patents and copyrights as key elements of global trade in the twenty-first century.

This issue of *Virginia Lawyer* is dedicated to examining key international issues concerning the professional interest of lawyers grappling with global trade and transnational business in today's environment. It examines the history of U.S. litigation in the World Trade Organization during its first ten years (1995–2005); it assesses recent developments in U.S. corporate governance pertaining to foreign companies; and assesses newer U.S. rules regarding export controls. The authors' intents are to highlight these important areas and assist members of the Virginia State Bar to better understand these developments in the new world of global trade and transactions today.