

By far the majority of countries lack specific legislation governing the entry of foreign banks. As a result, any restrictions placed on such entry are generally imposed by discretionary policy of the Government or of agencies charged with bank regulation and supervision such as the central bank or Finance Ministry. In cases where applicable legislation does exist, such as in Sweden, Mexico, Australia, and Canada, it usually prohibits the establishment of foreign banking corporations. Prohibition may be effected by making foreign ownership of facilities illegal, as in Sweden and Mexico, or it may severely limit the domestic activities of foreign banks, as in Australia. While in most instances the discretionary action of foreign authorities has allowed at least some form of entry, a number of countries appear at present to be effectively closed as far as the establishment of *de novo* foreign branches and affiliates is concerned. Brazil and Japan, on the other hand, are examples of countries that prohibit or currently refuse the establishment of direct branches only.

The application of discretionary powers may result, and on various occasions has resulted, in seemingly inequitable decisions on the part of ruling authorities. In other words, while one foreign bank's application may be approved, another may be turned down. In addition, changes frequently occur over time in the relative ease or difficulty of entry.

Where discrimination has been apparent, no indication of discrimination on a nationality basis exists. Specifically, there are no cases in which American banks appear to have been discriminated against because of their simply being American.¹ Rather, foreign regulatory authorities appear to judge each application on its individual merits. Of particular importance in this content are the benefits—specifically loans and other services—which the foreign country expects to derive from its new relationship.

One form of "impersonal discrimination" exists where countries legally require demonstration of reciprocity on the part of the applicant's home country. This discrimination is relatively rare, however, but does include, among others, Brazil, India, and Japan. With respect to U.S. banks, the reciprocity requirement represents a potential problem since no provision currently exists for chartering foreign banks at the national level. Consequently, the individual U.S. bank faced with a reciprocity requirement depends on the law or discretion of the State in which it is domiciled whether or not reciprocity can be granted.²

In this connection, it should also be noted that insistence on the principle of reciprocity by licensing authorities in the United States may not always be in the best interest of U.S. banks operating overseas.³ While the question of reciprocity is often raised by local au-

¹ Whether the present Canadian bank situation represents such a case is debatable. Undoubtedly, no foreign acquisition of Canadian banks would at the present time receive an unqualified welcome from the authorities. Whether the Canadians would have moved to restrict the growth of the Mercantile Bank of Canada if its ownership had remained in the hands of nationals of the Netherlands, however, is not clear.

² For a detailed discussion of this subject, see *Economic Policies and Practices*, paper No. 9, "Foreign Banking in the United States," materials prepared for the Joint Economic Committee, Congress of the United States, U.S. Government Printing Office, Washington, 1966.

³ The concept of reciprocity has a number of facets in connection with international banking. Is it sufficient that foreign banks should be able to establish facilities of some type in the host country, or are restrictions on the form and function; i.e., limitations on direct branches, majority ownership of affiliates, and particular types of services within the meaning of the term? If the national authorities are willing but other authorities keep the facility from being established in a desired city, is reciprocal treatment being extended? Few would argue that precisely identical treatment is necessary to establish that reciprocity exists, for in many cases the scope of functions of a foreign banking facility would not require privileges such as discounting that exist to service indigenous banks. But where does the line of demarcation come? It is not proposed to construct a definition of reciprocity here, but rather to point out a few of the problems involved.