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BOOK REVIEWS

INTERNATIONAL TAX PLANNING: MATERIALS ON THE PLANNING OF INTERNATIONAL TRANSACTIONS. By William C. Gifford and William P. Streng. Second Edition. Tax Management, Inc., 1241 25th Street N.W., Washington, D.C. 20037, 1979. Pp. 706. \$45.00.

The increasing importance of international tax to tax lawyers has resulted in greater academic interest in the subject in law schools across the United States. This book is designed for use in a course in international tax, from the point of view of the U.S. tax lawyer. However, its usefulness should extend to practitioners who are interested in an introduction to the field, as well as provide a convenient repository of the principal relevant materials.

The authors comprehensively survey the field of U.S. taxation of international transactions. Chapters cover nearly every aspect of international commerce which would involve questions of tax, including export operations, licensing, investment abroad, currency problems, foreign employment, boycotts and bribes, and foreign trusts. A bibliography of leading works in the field is included, as is a reprinting of the present U.S. "Model" Income Tax Treaty.

Organized in a unique fashion, the book serves the functions of both a course text and a reference work. Initially, several lengthy problems are set out, which involve typical situations the practitioner would encounter in representing clients, and each problem is followed by a detailed outline of the materials in the remainder of the book which are relevant to the analysis of the problem. The problems appear to be quite realistic simulations of actual situations and lend themselves well to class use or, perhaps, to self study by those who do not have the good fortune to have a course in this field available. By placing the pedagogical apparatus in the front of the book in this way, the authors have obtained freedom to organize the material in the remainder of the book in a manner which is not skewed by the usual course needs.

The selection of the material in the reference portion of the book is excellent and comprehensive. A great strength of the selection of material is its breadth. The material includes not only the usual cases, but also a wealth of administrative and informal material such as press releases, extensive selections from legislative history, and proposals for

change from such bodies as the American Bar Association Section of Taxation.

From the point of view of a practitioner using the book as a reference work, one defect is the general absence of detailed, comprehensive textual materials by the authors setting forth the framework of the general "rules" which the included material explicates. This, no doubt, is a by-product of the basic purpose of the book, *i.e.*, for classroom use, which assumes that students are supposed to learn to think for themselves. It is hoped that future editions will not be so dominated by this purpose and that readers will be favored with more textual material so the usefulness of the material will be extended.

Another difficulty with this book, as with any book on taxation, is the absence of latest developments. Tax is a rapidly moving field, and taxation of international transactions is no exception. Since the March 15, 1979, cutoff date, for example, there have been substantial developments relating to the foreign tax credit which are not, of course, dealt with in the book.¹ It is hoped that the authors will provide frequent supplements, or new editions, to keep the material timely.

On the whole this is an excellent book, considering its purposes, and would be a useful addition to the library of the student or practitioner who needs to refer periodically to a comprehensive source of material on U.S. taxation of international transactions.

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¹ See Proposed Treas. Reg. § 1.901-2, § 1.903-1, 44 Fed. Reg. 36,071 (1979). There have, of course, been numerous other developments in this field since March 1979. A good annual review of recent developments in tax appears in THE TAX LAWYER each summer; *see, e.g.*, 32 THE TAX LAWYER 953-1436 (1979). An excellent way to keep abreast of current developments in administrative matters is TAX NOTES, a weekly publication of Taxation with Representation Fund (and the TAX NOTES microfiche service which contains the full text of all administrative documents).

ANTIDUMPING LAW. 1 Michigan Yearbook of International Legal Studies. Ann Arbor: The University of Michigan Press, 1979. Pp. xii, 320. Bibliographies. Index.

Antidumping Law is the first in a series of volumes that the University of Michigan School of Law plans to publish annually under the title *Michigan Yearbook of International Legal Studies*. Each volume will be an intensive study of a current international legal problem and is intended for use by scholars, practitioners and policymakers. *Antidumping Law* is an impressive maiden issue; if future volumes continue to build on its foundation, the *Michigan Yearbook of International Legal Studies* will become a useful volume for every international legal library.

Unfortunately, despite the overall quality of this volume, it has already become somewhat dated because of the recent enactment of the Trade Agreements Act of 1979,¹ which revamped the U.S. antidumping law.² In addition, a number of the articles deal with the U.S. steel industry, focusing on the Trigger Price Mechanism (TPM).³ The TPM was temporarily suspended, however, on March 21, 1980,⁴ and there is serious question as to whether it will be reimplemented in its present form. Although several of the articles have become anachronistic because of these new developments, the majority of the essays discuss broader issues that remain relevant in spite of changes in the law. Moreover, the appendix contains valuable statistical information that remains unaffected by recent developments.

Antidumping Law is divided into three sections.⁵ The first section, entitled "Policy Bases," analyzes the political and economic justifications for the Antidumping Act of 1921.⁶ This section focuses on the theory of dumping and is relatively unaffected by changes in the law wrought by the Trade Agreements Act. The second section, entitled "The Antidumping Process: Procedures and Proposals," is an in-depth look at how the Antidumping Act of 1921 functioned. These articles, to a large extent, were mooted by the recent repeal of the 1921 Act. The final section, entitled "The International Perspective," discusses the Kennedy

¹ Pub. L. No. 96-39, 93 Stat. 144 (1979) (codified in scattered sections of 19, 26 U.S.C.).

² The Antidumping Act of 1921, 19 U.S.C. §§ 160-71 (1976), was repealed by the Trade Agreements Act of 1979, 19 U.S.C.A. §§ 1673-77 (West Supp. 1980).

³ See generally Note, *The Trigger Price Mechanism: Does It Prevent Dumping by Foreign Steel-makers?*, 5 N.C.J. INT'L L. & COM. REG. 279 (1980).

⁴ 45 Fed. Reg. 20,150 (1980).

⁵ There is also an introduction by John H. Jackson, professor of law at the University of Michigan and author of *WORLD TRADE AND THE LAW OF GATT*.

⁶ 19 U.S.C. §§ 160-71 (1976) (repealed 1979).

Round GATT negotiations, European and Japanese antidumping laws, and the application of the antidumping statute to state-controlled economies.

The three articles in the first section of "Policy Bases" are the most extensive in the volume. The authors, Bart Fisher, Walter Adams, and John Barceló, present three opposing views on the political and economic justifications for the antidumping law. Mr. Fisher's⁷ essay, "Dumping: Confronting the Paradox of Internal Weakness and External Challenge," is mildly critical of government trade law enforcement efforts and utilizes some impressive statistics to support its claim that foreign producers are dumping products in the United States. Mr. Fisher asserts that dumping has increased markedly in the 1970s as a result of four factors: slower economic growth and higher unemployment in Europe; drastically higher oil prices that must be paid for with increased exports of manufactured goods; overcapacity, especially in certain key industries like steel; and conscious decisions by America's trading partners to increase their shares of certain markets, such as televisions and automobiles. Mr. Fisher argues that the United States should counter dumping by vigorously enforcing the antidumping law.

In contrast, Mr. Adams's⁸ essay, "Import Restraints and Industrial Performance: The Dilemma of Protectionism," is a virulent attack on U.S. industry, which he views as uncompetitive, inefficient and hostile to innovation. Mr. Adams focuses his attention on the U.S. steel industry, persuasively demonstrating that it refused to adopt efficiency-improving innovations until long after they were introduced in Japan and Europe. Mr. Adams argues that the present problems of the U.S. steel industry stem from poor business decisions made in the past and not from foreign dumping. In his opinion, the antidumping law is a protectionist device; vigorous enforcement of the law would be counterproductive because it would discourage U.S. steelmakers from taking the painful and expensive steps necessary to improve their competitive position. Further protectionist measures, Mr. Adams asserts, would only increase the rate of U.S. inflation because the oligopolistic market structure of the U.S. steel industry would permit U.S. producers to raise prices to increase profits.

The third article in this section, "The Antidumping Law: Repeal It or Revise It," is a radical departure from the standard points of view represented by the first two articles. The author of this essay, John Barceló,⁹ argues that the United States should repeal its antidumping law altogether and rely exclusively on the antimonopolization provisions of section 2 of the Sherman Act¹⁰ to protect American industry. Mr.

⁷ Bart S. Fisher is a partner in the law firm of Patton, Boggs & Blow, Washington, D.C.

⁸ Walter Adams is a professor of economics and a past president of Michigan State University.

⁹ John J. Barceló is a professor of law and the director of International Legal Studies at Cornell Law School.

¹⁰ 15 U.S.C. § 2 (1976).

Barceló's article rejects the traditional definition of dumping as sales in a foreign country at less than the price charged for the same or similar merchandise in the producers' home market. Mr. Barceló argues instead that "price discrimination is a normal phenomenon in healthy international trade."¹¹ He adopts the analysis of Areeda and Turner in their influential article, *Predatory Pricing and Related Practices under Section 2 of the Sherman Act*.¹² Briefly, Areeda and Turner argue that only "predatory prices" violate the Sherman Act. Predatory prices are defined as prices that do not return marginal cost, or, because it is easier to calculate, average variable cost. By definition, any price above marginal cost, even if it is below average cost—the cost of production plus a reasonable return on capital—is presumptively legal.

Mr. Barceló adopts the Areeda and Turner analysis and applies it to the international marketplace. He asserts that the present antidumping law, which essentially forbids all importers from selling below their average cost, is economically unjustifiable. Mr. Barceló argues that permitting foreign importers to sell in the United States below their average cost of production would stimulate price competition. At the same time, it would not unfairly injure American companies because any equally efficient U.S. producer could successfully compete with the foreign importer. The net result of increased price competition, Mr. Barceló asserts, would be to lower excessive corporate profits, thereby reducing the U.S. inflation rate by lowering prices to consumers. In Mr. Barceló's opinion, the only time the government should become involved in the marketplace is when foreign importers adopt predatory prices in an attempt to monopolize some market. The appropriate remedy for this problem, according to Mr. Barceló, is section 2 of the Sherman Antitrust Act. Consequently, he recommends that the antidumping law be repealed.

Although the U.S. Government is not likely to adopt Mr. Barceló's approach anytime in the near future, the economic arguments he adopts from Areeda and Turner are becoming widely accepted. In this reader's opinion, however, there are problems with adopting the Areeda and Turner predatory pricing analysis and applying it on a wholesale basis to the antidumping law. Certain tariff and non-tariff barriers to trade that restrict the free flow of goods in international commerce place limitations on the applicability of the Areeda and Turner analysis to price discrimination in international trade. Nevertheless, Mr. Barceló's argument is provocative and demands a response by an individual with a strong background in international economics.

The second section of *Antidumping Law* is not as provocative as the

¹¹ Barceló, *The Antidumping Law: Repeal It or Revise It*, 1 MICH. Y.B. INT'L LEGAL STUD. 53 (1979).

¹² Areeda & Turner, *Predatory Pricing and Related Practices under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697 (1975).

first. Several of the articles contained in this section have been mooted by recent developments.¹³ For example, the essay by Peter Ehrenhaft, the Deputy Assistant Secretary of the Treasury, outlines needed reforms in the Antidumping Act of 1921 and was intended as a preview of the Tokyo Round GATT agreements.¹⁴ Unfortunately, since the GATT negotiations were completed and the U.S. implementing legislation enacted before *Antidumping Law* was published, his article fails to provide the preview he intended and is not as useful a guide to the new legislation as are later, more detailed articles.

The articles in the third section of *Antidumping Law* are quite short.¹⁵ They are not intended to give the reader a detailed account of how Japan and Europe apply their antidumping laws. Instead, they give the reader a brief overview of the approach taken by America's major trading partners. In addition, the appendix contains a digest of all the U.S. cases processed under the antidumping law as well as a comprehensive bibliography of primary and secondary sources discussing the antidumping law. Again, however, the reader is cautioned that some of the references cited are outdated.

Overall, *Antidumping Law* is a valuable handbook for any scholar or practitioner whose work involves transnational trade regulation. It is unfortunate that some of the articles in this volume became outdated so rapidly by recent developments. But, then, the purpose of the volume is to explore the broad policy underlying the antidumping law, not to provide the practitioner with day to day developments in the law. This purpose has not been defeated by the recent, mostly cosmetic, changes in the antidumping law. Therefore, this reader recommends *Antidumping Law* to anyone seriously interested in U.S. trade policy.

JOHN JAY RANGE

¹³ Section two contains the following articles in addition to Mr. Ehrenhaft's essay: *The Antidumping Act: Comments for Business*, by John Cutler, a partner in the law firm of Heller, Ehrman, White & McAuliffe, San Francisco, California; *The Antidumping Act: Proposals for Change*, by Noel Hemmendinger, a partner in the law firm of Artner, Hadden & Hammen-dinger, Washington, D.C.; *Proposals for Change in the Administration of the Antidumping Act*, by Stephen L. Gibson, a partner in the law firm of Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.; *The "Fast-Track" Procedure: Problems of Implementation*, by David N. Wall, a student at the University of Michigan School of Law; *The Standard of Injury in the Resolution of Antidumping Disputes*, by Edward J. Krauland, a student at the University of Michigan School of Law; and *Gilmore: An Antidumping Proceeding as Cost-Price Comparison*, by Fred A. Rodriguez, a student at the University of Michigan School of Law.

¹⁴ General Agreements on Tariffs and Trade, 61 Stat. A3 (Parts 5-6) T.I.A.S. No. 1700, 55 U.N.T.S. 308 (1947).

¹⁵ The articles are: *United States Compliance with the 1967 GATT Antidumping Code*, by Robert E. Hudec, professor of law at the University of Minnesota; *European Antidumping Law and Procedure*, by Dieter Oldekop, Counselor for the Legal Service of the Commission of European Communities, and Ivo Van Bael, a partner in the law firm of Debandt, van Hecke, van Gerven, Lagae & Van Bael, Brussels, Belgium; *Antidumping Law in Japan*, by Gary Saxonhouse, professor of economics at the University of Michigan; and *The Treatment of Products from State-Controlled Economies under the United States Antidumping Law*, by Stephanie Smith, a student at the University of Michigan School of Law.

PUBLIC CONTROLS ON INTERNATIONAL TRADE. By Andreas F. Lowenfeld, New York: Matthew Bender, 1979. Pp. xv, 371. Documents Supplement, Table of Cases, Index.

The controversy over public controls on international trade is again raging in corporate boardrooms, in the union halls, and in the U.S. Congress. Ten years of growing international trade but continuing U.S. trade deficits, continued U.S. dependence on potentially unreliable OPEC nations for energy resources, and the current crisis in the U.S. automobile industry, have focused popular attention on international economic law. Unfortunately, the attention rarely has shown the depth or perspicuity needed to adequately analyze or develop solutions to the problems.

The North Carolina bar is increasingly asked to serve the needs of clients wishing to develop export markets or requiring imports for their businesses. With active encouragement from the state, foreign investment in commerce and agriculture is growing. The need for attorneys trained to think and deal competently in international terms is rapidly increasing.

Andreas F. Lowenfeld's six volume work on International Economic Law was written to serve as a classroom teaching tool for law students. Earlier volumes of the set have dealt with International Private Trade, International Private Investment, Trade Controls for Political Ends, The International Monetary System, and Tax Aspects of International Transactions. The sixth and final volume, *Public Controls on International Trade*, continues in the same style and emphasizes the same themes as the earlier volumes.

The text differs from the typical law book in the absence of "cases" and "decisions," and in its step-by-step explanations of the basic concepts required to deal with the subject matter. Lowenfeld's style of developing the subject matter by focusing on an actual occurrence or issue is continued. Thus, for basics Lowenfeld includes a section on why people trade, a history and introduction to the General Agreement on Tariffs and Trade, and a large section on the European Economic Community, Japan, and the United States as the three principal participants in the international trading system. The motif tying these basic sections together is a very illustrative study of the steel industry that focuses on the voluntary restraint agreements of the late 1960's and early 1970's. The interlacing tensions of government, business and labor that arise in the

process of making decisions consistent with applicable laws, economic doctrine, and basic political realities are highlighted.

A final section deals with the Multilateral Trade Negotiations known as the Tokyo Round. Here the publishing date of the book is significant. The fact that various final versions of the agreements were only being printed as this book went to press, is reflected in a lack of discussion of the practical significance of the agreements. Nevertheless, the discussion of the negotiated issues is adequate. The issues involved in these negotiations are outlined and a clear understanding of the basic points in the negotiations can be obtained by referring to the examples discussed throughout the text. For example, there is a long discussion of subsidies and countervailing duties in Lowenfeld's discussion of the steel industry that is very helpful in understanding the negotiations on that crucial issue.

Public Controls on International Trade, as Lowenfeld confesses, does not deal with two important areas of international economic law. First, by focusing on the principal industrialized nations, the book touches only briefly on the developing nations and their increasing importance in the international economy. Also conspicuously absent is any discussion of antitrust issues as they relate to international business. This is too substantial an area to be ignored in any international business law course.¹

Public Controls on International Trade also contains an excellent 606 page document supplement. International agreements such as the GATT along with selected European, Japanese and United States documents and statutes are included. Unfortunately, this excellent source is already becoming dated because the United States Trade Act of 1979 and the 1979 amendments to the Tariff Act of 1930 dealing with subsidies and countervailing duties were passed by Congress after this book went to press.

Law students and attorneys with any international economic law experience should find *Public Controls on International Trade* relatively easy and profitable reading. For the uninitiated wishing to learn the basics of public controls on international trade, Lowenfeld's text may be more rewarding and comprehensible than the traditional law texts. Subject to the caveat that the law in this area changes rapidly, this text should give the reader a sound background upon which to develop expertise in areas of specific interest.

CYRUS M. JOHNSON, JR.

¹ See, e.g., The Basics of International Antitrust, 5 N.C.J. INT'L L. & COM. REG. 1-167 (1980) (Symposium).