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World Trade and the Law of GATT, by John H. Jackson

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der the Corps of Engineers; and the few "nuisance" cases dealing with pollution that Professor Gray reprints are buried at the back of the book.

And so it goes. Hopefully, into oblivion.

Of course, today's environmental concern may be largely a fad — what did ever happen to poverty law? — and soon perhaps we should not regret this book too much. Maybe it will only serve as a tombstone for a great deal of irritating rhetoric. If it has not delayed the appearance of more serious works, no great harm has been done. Still one wants to bring it to the attention of those other faddists, the protectors of the consumer. Twelve dollars is a lot of money for a lead balloon, and it might hurt if it were dropped on one's foot.

PETER D. JUNGER*

WORLD TRADE AND THE LAW OF GATT. By John H. Jackson. Indianapolis: The Bobbs-Merrill Company, Inc. 1969. Pp. xxxv, 948. \$27.50.

"Anyone who reads GATT is likely to have his sanity impaired." Thus does Professor Jackson introduce his 948 page work on the General Agreement on Tariffs and Trade (GATT), quoting Senator Millikin at the 1951 Hearings held by the Senate Finance Committee.¹ If Senator Millikin is right, Professor Jackson has successfully played the role of psychiatrist, for his book goes a long way toward the restoration of rationality.

As those familiar with this agreement are aware, GATT is the ill-prepared understudy which was required to step before the international economic footlights when one of the scheduled stars, the International Trade Organization (ITO), expired before curtime. The ITO was originally designed as an international institution whose function would be to assure the orderly expansion of international trade. It was to take its place alongside two other international institutions, and the three together were to form a sort of "three sister" act for world economic affairs. The second sister was designed to deal with world monetary problems and became the International Monetary Fund. The third was intended to cope with capital development and was given the rather unwieldy title of In-

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ternational Bank for Reconstruction and Development; it is better known today as the World Bank.

In 1948 the principal trading nations of the world could no longer wait for the completion of the ITO Charter negotiations. Anxious to put theory into practice, they held the first multilateral tariff negotiations and agreed on significant reductions in the then existing tariff rates. Because the value of the tariff concessions actually made could be impaired by discriminatory nontariff rules and regulations, the negotiators felt it necessary to establish a general code of trading conduct — a general agreement on tariffs and trade — to which all signatories would be subject, and which included a rudimentary forum where further tariff negotiations could be held, complaints aired, and disputes settled. Thus was GATT born.

As a specific trade agreement, GATT would in no way interfere with the ongoing negotiations for the ITO. The ITO Charter was to be the constitutional document that would supply the requisite organizational and secretariat support, as well as legislative underpinning, for the regulation of international trade. In addition, it would serve a quasi-judicial function by providing a forum for dispute settlement within an organized structure.

By the close of 1950 it became clear that the draft ITO Charter would not obtain the necessary approval to become effective. The need for an international trade forum remained, however, and the only existing entity that possessed any possibility of filling the economic and institutional vacuum left by the ITO's stillbirth was GATT. In this manner did a mere tariff agreement — which lacked the dignity of being called, and having the legal effect of, a treaty — necessarily evolve into a *de facto* international trade organization.

Only with this background in mind can one appreciate the extent of, and the difficulties inherent in, Professor Jackson's undertaking. The above discussion should also help underscore the importance of his work, coming as it does after GATT has been in existence for a generation. During this generation, GATT "operators" had taken the tariff agreement and created an organization. Because much of this metamorphosis occurred without the aid of a formal constitutional charter, there is no definitive record or "blueprint" of GATT. As Professor Jackson correctly states, it is particularly important to establish the blueprint now "because many of the original inventors and mechanics for GATT — those who

¹ J. JACKSON, *WORLD TRADE AND THE LAW OF GATT* at vii (1969).

have understood its idiosyncrasies and helped keep it running from its very beginning — are nearing retirement.”²

Professor Jackson had the unique opportunity when establishing his blueprint of becoming personally acquainted with many of these “inventors and mechanics.” In dealing with an organization established as much by wit as by word, the importance of these personal contacts as research tools cannot be underestimated.

In an unusual addition to a book of this kind, the author has included an “Epilogue” in which he explains some of the unique research problems inherent in his subject matter as well as the road-map he established in order to obtain the necessary information. In addition to acknowledging the importance of personal contacts, he lists obstacles he encountered in completing his research, such as the extensive time and travel necessary in order to inspect documents and interview participants, the problem of classified documents, and a plethora of unclassified documentation, most of it unindexed. The principal advantage of this Epilogue, of course, is that it provides an informal guide to subsequent GATT researchers who can profit from the author’s experience and thereby save considerable time in learning how and where to obtain the requisite data.

Professor Jackson not only proves himself a first-rate researcher, but also shows needed insight in organizing his material along functional lines, rather than in accordance with the strict order of the GATT articles. He has reshuffled the various articles and sections of GATT in a way that heightens an awareness of the business of this agreement. This reshuffling also accentuates the very pragmatic nature of GATT as an instrument designed and administered by diplomats with only a secondary regard for the function of the lawyer.

Part I of the book deals with GATT as a constitutional document, and includes all matters dealing with the organizational nature of GATT (including the membership and territorial application of GATT), the methods of voting on various issues, and provisions relating to dispute settlement.

Part II is the “idealist” section of the book, for it includes the substantive obligations of GATT. It is here that broad “code” provisions relating to international trade may be found. (This section of the book relates most directly to parts I and II of the GATT Agreement itself.)

Part III restores the reader to earth with a listing of the excep-

² *Id.* at 3.

tions to the code obligations mentioned in part II. Many of these exceptions have been included for political reasons and reflect the pragmatic nature of the agreement, which, if not ideal, is at least acceptable and therefore workable. Professor Jackson extracts these exceptions from their various hiding places within the agreement so that the reader can more fully appreciate their nature and extent. These exceptions deal with, among other things, waivers of obligations, regionalism and GATT, special provisions relating to developing countries, balance of payment problems, and agricultural and commodity adjustments.

An additional organizational feature which makes this book an unusually convenient research tool is the author's inclusion of relevant appendices at the end of chapters rather than at the end of the book.³ For example, chapter 16 deals primarily with antidumping duties. A detailed International Antidumping Code was successfully negotiated at the so-called Kennedy Round of GATT trade negotiations which concluded in 1967. The complete text of this Code is included at the end of chapter 16 so that page flipping for cross-reference purposes is held to a minimum. Or witness chapter 22 which deals with waivers of GATT obligations available under article XXV paragraph 5 of the Agreement. At the conclusion of this chapter, the author has assembled a chart showing the nature, extent, source, disposition, date, and status of every application for a waiver from the inception of GATT until January 1, 1969.

Any criticism of this work would not be directed at its emphasis or its handling of complex materials — both of which are excellent — but rather at occasional organizational lapses in the author's analysis of GATT problems. He lists as two separate policy questions GATT's role in the treatment of developing countries and the difficulties inherent in future trade negotiations which retain the twin principles of "most favored nation" and "reciprocity" for concessions granted. By separately listing these principles as issues facing future trade negotiations, Professor Jackson discloses his preoccupation with the relationship of developed countries to developing countries. (The latter insist on special preferences in contravention of the "most favored nation" principle, and in tariff negotiations they claim an inability to make reciprocal concession offers to the imports of developed countries.) In addition, he fails to mention more im-

³ This is not to say that the book lacks overall appendices. There are eight such appendices making it exceptionally well documented, but the materials included in these appendices relate to the book as a whole rather than specifically to any of its parts.

portant obstacles to future trade negotiations — especially trade negotiations among developed countries. These obstacles are nontariff barriers — those national regulations, other than tariffs, which alter the flow of imports. That nontariff barriers now assume enormous importance attests to the success of the six previous rounds of GATT trade negotiations which squeezed the protective “water” out of the tariff so that nontariff restrictions — present since the signing of GATT — now account for the larger share of protection afforded domestic procedures in developed countries. Future trade negotiations aimed at achieving further trade expansion among developed countries must be structured to diminish the protective effects of nontariff barriers rather than to concentrate on tariff reductions.

The foregoing criticism is small, however, in light of the fact that in the substance of his book Professor Jackson deals competently with nontariff barriers generally, and indeed, in his introductory chapter to part II, suggests several different methods by which nontariff barriers might be handled at a future trade negotiation. He thus demonstrates not only an awareness of the problem, but also a flexible approach toward its solution.

In summation, Professor Jackson’s work must be recognized as an important and well executed contribution to an area few lawyers have investigated. He has succeeded admirably in his triple purpose: to respond to the needs of the student of GATT; to respond to the needs of the practitioner (whether private or governmental) by creating a practical research tool; and to respond to the needs of the academician by providing a much needed analysis of the jurisprudence of GATT. Indeed, in large measure Professor Jackson’s work becomes what he points out in his Epilogue does not exist — a “West digest system for GATT.”⁴

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⁴ J. JACKSON, *supra* note 1, at 795.

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