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Book Review - International Trade Law and Practice of the European Community: EEC Anti-Dumping and Other Trade Protection Laws by Ivo Van Bael and Jean-Francois Bellis

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BOOK REVIEW

INTERNATIONAL TRADE LAW AND PRACTICE OF THE EUROPEAN COMMUNITY: EEC ANTI-DUMPING AND OTHER TRADE PROTECTION LAWS. By Ivo Van Bael and Jean-Francois Bellis.† Oxfordshire: CCH Editions Limited, 1985. Pp. viii, 427. £16.50.

Reviewed by N. David Palmeter*

One of the benefits of the study of foreign laws and legal institutions is that the process can serve to sharpen a lawyer's understanding of the law and legal institutions of his own country. Apart from criminal law and procedure, however, comparative legal studies beyond traditional areas of private law often seem closer to comparative political science than to comparative law. Certainly differing constitutional systems and traditions can reduce the areas of the meaningful study of comparative public law, as opposed to comparative public policy.

This is changing, in this increasingly interdependent world, and one area in which it is changing rapidly is in the field of international trade law. Despite differing political and constitutional systems, the major trading nations of the world are increasingly enacting municipal laws that regulate imports in conformity (to greater or lesser degrees) with the standards of the General Agreement on Tariffs and Trade (GATT),[1] particularly its Antidumping Code and its Subsidies Code.[2] Unsurprisingly, the United States is one of the leaders in the move to transform trade policy into trade law.[3] Another is the European Community. For the U.S. lawyer practicing in this field, there-

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[1] General Agreement of Tariffs and Trade, Oct. 30, 1947, 61 Stat. (5), (6), T.I.A.S. No. 1700, 55 U.N.T.S. 194.

[2] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures) (Antidumping Code) and Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) (Subsidies Code), *done* Apr. 12, 1979, *reprinted in* AGREEMENTS REACHED IN THE TOKYO ROUND OF THE MULTILATERAL TRADE NEGOTIATIONS, H.R. Doc. No. 153, 96th Cong., 1st Sess., pt. 1, at 309-37 and 259-306 (1979).

[3] "It remains a fact that most doctrines in trade law, if not trade policy, originate in the United States (although this is now changing)." Bronckers, Book Review, 21 J. WORLD TRADE L. 121 (1987).

fore, this work of Ivo Van Bael and Jean-Francois Bellis is greatly rewarding.

Van Bael and Bellis, two distinguished international trade lawyers in Brussels, have subtitled their work, "EEC Anti-Dumping and Other Trade Protection Laws." The emphasis in the text, as well as in the subtitle, is on antidumping proceedings, reflecting the preference of European industries for the protection from imports available under antidumping laws to that provided under other trade laws (a preference that appears to be shared by their industrial counterparts in the United States). More than half of the text is devoted to EEC antidumping laws; the balance is devoted to countervailing measures, to safeguards, and to the "New Commercial Policy Instrument" which, the authors note, is modeled after Section 301 of the U.S. Trade Act of 1974.[4]

The book is a straightforward exposition of EEC trade law; it is not a critique, although the authors do allow themselves an occasional wry comment. They begin with a description of the EEC institutions responsible for administering the trade laws, particularly the Commission and the Council of Ministers, which operate under the authority of the 1951 Paris treaty establishing the European Coal and Steel Community (ECSC), and the 1957 Rome treaty establishing the European Economic Community. There are differences between the two treaties, the authors note, and these can have practical impact on trade matters because steel is subject to the terms of the ECSC treaty, while most other products are subject to the EEC treaty.

Each of the four substantive areas dealt with — antidumping, countervailing, safeguard, and the "New Commercial Policy Instrument" — is discussed in similar fashion: (1) a general introduction to the topic; (2) a discussion of its substantive elements; (3) the relief available; and (4) an explanation of the procedure. A separate chapter dealing with coal and steel products is included within the antidumping section of the book.

In a series of tables, the authors summarize the history and ultimate disposition of trade cases in the EEC, both administrative and judicial. In sixteen annexes they include a wealth of reference material, including the text of relevant articles of the GATT, the GATT Antidumping Code, Subsidies Code, EEC regulations, and sample antidumping questionnaires.

Thus, while this is an EEC trade practitioner's book, the insights that comparative analysis of law can bring make this work valuable for the non-EEC practitioner as well. The U.S. lawyer will note such similarities to U.S. practice as a six-month investigative period for the antidumping norm, adopted by the EEC only in 1984, and a five percent home market viability test. On the other hand, the EEC differs from the United States when utilizing constructed value as the measure of "fair" or "normal" value. Its regulations call for inclusion of reasonable profit levels, depending upon the industry, in contrast to the arbitrary eight percent minimum required by U.S. law.[5]

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[4] U.S. Trade Act of 1974, § 301, 19 U.S.C. § 2411 (Supp. III 1985).

[5] 19 U.S.C. § 1677b(e)(1B)(ii) (1982).

In actual practice, Van Bael and Bellis note, profit levels used in EEC constructed value calculations have ranged from one to ten percent.[6]

The authors are critical of the EEC procedure by which the same institution that determines the existence of dumping is charged with making the injury determination as well. This is a cause of the paucity of negative injury determinations in the EEC, the authors believe, because the agency that has just found dumping has no "incentive" to see its work go for naught. Van Bael and Bellis suggest a preference for the U.S. system, in which the independent U.S. International Trade Commission considers injury after the Department of Commerce finds dumping or subsidization.[7] To one who has been critical of the U.S. system, and has suggested that both functions be entrusted to a single agency,[8] such an argument can be challenging.

Other aspects of the EEC antidumping regime that will interest the U.S. practitioner include a "sunset" provision and a very different system for collecting and refunding duties. A "Community Interest" provision that authorizes discretion in the application of both antidumping and countervailing duties is totally absent from U.S. law. Likewise, EEC law provides for the imposition of antidumping and countervailing duties only in an amount necessary to remedy the injury, a practice contemplated by the GATT Codes that also is not part of U.S. law.[9]

EEC practice with regard to countervailing duties, safeguards, and the Section 301-style New Commercial Policy Instrument is not as extensive as is its antidumping practice. Van Bael and Bellis suggest that the explanation for the comparative lack of countervailing cases in the EEC may reflect a recognition of the EEC's vulnerability on the issue of subsidization.

The trade regulation laws of nations, and of trading entities such as the EEC, increasingly influence the standards of living of consumers and producers everywhere. With overt protectionism currently somewhat unfashionable, the danger of protectionism by legal process increases. Antidumping and countervailing laws, in particular, are susceptible to this kind of manipulation and abuse. One way the risks of this occurring can be reduced is by critical and comparative analysis of different legal regimes, recognizing that a provision inserted in one nation's law to restrict imports can be adopted by another trader to thwart the originator's exports. It should not be without significance to those who wish to "tighten" U.S. trade laws — and thereby, in the spirit of reciprocity, consent to the concomitant "tightening" of everyone else's trade laws — that U.S. exporters have been, according to Van Bael and Bellis, the leading targets of

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[6] I. VAN BAEL & J-F. BELLIS, INTERNATIONAL TRADE LAW AND PRACTICE OF THE EUROPEAN COMMUNITY: EEC ANTI-DUMPING AND OTHER TRADE PROTECTION LAWS 40, 41 (1985).

[7] 19 U.S.C. §§ 1671, 1673 (1982 & Supp. III 1985).

[8] *See* Palmeter, *Torquemada and the Tariff Act: The Inquisitor Rides Again*, 20 INT'L LAW. 641, 653 (1986) (arguing that "[a] single proceeding encompassing both aspects of a case [i.e., substantive violation and injury] before a single agency would be more efficient and would comport more closely with the obligations of the United States under the international Antidumping Code and Subsidies Code").

[9] Antidumping Code, *supra* note 2, art. 8, para. 1; Subsidies Code, *id.*, art. 4, para. 1.

antidumping complaints under the EEC treaty.[10] Thus, in the process of explaining the EEC trade protection laws, Van Bael and Bellis turn, for the U.S. lawyer, a much needed bright and critical light on U.S. trade laws and practices. Their book, therefore, is more than a practitioner's manual. It is also a contribution to understanding in one important area of international relations. It deserves, accordingly, wide readership.

[10] I. VAN BAEL & J-F. BELLIS, *supra* note 6, at 12.