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Book Review: Foreign Commerce and the Antitrust Laws (1973)

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and Japan. The points of reference and sound political insight he offers in his present work should continue to provide timely guidance.

JACOB D. BEAM*

FOREIGN COMMERCE AND THE ANTITRUST LAWS. By Wilbur L. Fugate. Boston: Little, Brown & Co., 2d ed. 1973. Pp xxv, 491. \$35.00.

Wilbur Fugate's treatment of the antitrust laws and foreign commerce will certainly be (as the first edition has been) part of the armory of the lawyer whose practice embraces antitrust aspects of foreign trade. That there has been and will be considerable activity in this field is well illustrated by his long list of foreign trade cases brought by the Department of Justice in Appendix B, some 250 cases brought between 1906 and 1973 covering a variety of services and products from aluminum to zinc.

The book is compendious but it has a focus that its readers will immediately be aware of. It is not the purpose of this book to engage in overall assessment of the need for U.S. regulation of foreign trade or even, except incidentally, to measure the impact of the antitrust laws upon U.S. foreign trade. The economics and the politics are left to other studies and this book will be of primary interest to the American and foreign practitioner. Thus, the general nature of the antitrust laws is discussed, with a description of their domestic application, and there are chapters on jurisdiction, general practices in the foreign area, monopoly in foreign trade, the Webb-Pomerene Act, patents, trademarks, mergers and joint ventures, regulated industries and special problems of relief. Chapter 15 attempts an overall evaluation and reviews progress toward inter-governmental cooperation in enforcement and comity. The last chapter discusses foreign antitrust laws.

The book may thus be described as an in depth survey of its subject, a good place for either the student or the practitioner to begin to grapple with the problems of foreign commerce and the antitrust laws. To say only that, however, might be to say too little because *Foreign Trade and the Antitrust Laws* is broad enough in scope and rich enough in detail to acquaint the searcher with all of the literature that relates to his problem. It is not, however, a how-to-do-it book but a comprehensive treatment of the substantive and some of the procedural law in this field. Prospective users of the work will be reassured to know that this second edition is truly a revision of the original book, with almost 300 pages of valuable material added.

Any reviewer of a book ought to avoid the initial trap that invites him to criticize the author for not having written the book the reviewer would have

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written or would like to see written. Judged by the standard he set himself Mr. Fugate has to be given the highest marks. This is a straightforward and highly competent account of the law and the precedents.

This reviewer cannot leave *Foreign Commerce and the Antitrust Laws* without expressing some regrets. One regret is that the author deals so sparingly with the problems of the multinational corporation and efforts of nations to work cooperatively in the field of antitrust enforcement. These closely related areas of concern recall the situation that existed in the United States before the antitrust laws were enacted, a situation in which the States competed for the presence of lucrative corporations. This situation still exists but the potential for the misuse of economic power in any given jurisdiction is considerably damped down by the surveillance of the Department of Justice and the Federal Trade Commission. Mr. Fugate notes the potentially inhibiting effect of strong antitrust enforcement upon foreign investment both into the United States by foreign interests and in foreign countries by U.S. interests. He dismisses these fears, but one wonders if the reluctance shown by other countries to embark upon vigorous antitrust enforcement does not result from their desire to create a favorable business climate for strangers. After all, what is best for Canada, IBM or a strong antitrust policy? It is a question we have never really resolved in the United States. Powerful corporations deliver great benefits in the form of economic growth and efficiency, but they have great potential for economic exploitation. There is scarcely one of them that has not run afoul of the antitrust laws, and many times.

Is it reasonable to believe that our giants will be more careful where they plant their feet when they walk on foreign soil? Can we expect that our laws governing their actions will be enforced with the same right and precisions when it is not our citizens whom they exploit? Are we in the best positions to judge when there has been a "restraint of trade or commerce" within the boundaries of another nation?

No doubt the "host" country is the best judge of this and the theory is that if the U.S. corporation is harming its citizens, that country will take the protective measures necessary for its own welfare. Perhaps, but it may find itself doing so at the cost of giving up the advantage of the presence of the American corporation and, indeed, the presence of other foreign corporations. The corporations with multinational potential are, after all, free to locate anywhere in the world which means that nations will compete for the advantages of their presence. New Jersey once claimed the title "Mother of Corporations" by being a permissive parent. These inducements to be permissive are well described from the French point of view in Servan Schreiber's book, *The American Challenge*.¹

Servan Schreiber's plea is made to Frenchmen for the sake of France but the difficulty faced by France would be immeasurably diminished if it were not so easy for the migrant corporation to find a host country that will treat it

¹SERVAN-SCHREIBER, *THE AMERICAN CHALLENGE* (1968).

more favorably from an antitrust point of view. Investment capital, by its very nature, obeys laws of economic and not national origin.

It is no accident that the problems of restraint of trade are dealt with by us nationally through action by the central government instead of legislation in 50 jurisdictions. There is no question that with national markets antitrust problems should be dealt with by a national authority. The same logic is applicable to worldwide markets and multinational corporations. There are numerous approaches to putting such an idea into operation and the author discusses some of them in the last two chapters of this book, but one could wish there had been a fuller exposition of the problems that called the treaty proposals and international commissions, which the author describes in § 15.0 (page 460), into being.

These considerations and the thought that Mr. Fugate has probably done justice to the law by merely setting it down in black and white give rise to another regret. The courts and the antitrust bar conceive antitrust law so narrowly that one may well question how apt a tool antitrust really is for the purposes of regulating competition.

New legal problems beget new legal devices, as for example, environmental problems begot that strange creature, the impact statement. But so often the new techniques are not applied to old problems. Would it not be possible to meet the problems so real to Mr. Servan Schreiber by requiring a new entry into the economic environment of a nation to file something in the nature of an impact statement by which it undertook to provide certain benefits at costs precalculated in terms of economic and cultural impact?

The idea may seem far-fetched but norms for permissible entry have already been formulated by Japan, Mexico and Canada and, in different degrees, by other nations. It would be much better in the long run if there were some uniformity in these norms as they were applied throughout the world.

However, even with these problems, which go beyond the scope he has marked out for himself, Mr. Fugate's book is helpful because he tells us where we are. If some would like to use this as a starting place, the author, no doubt, would not object.

PAUL P. HARBRECHT*

INTERNATIONAL LICENSING AGREEMENTS. Edited by Gótz M. Pollzien and Eugen Langen. Indianapolis and New York: The Bobbs-Merrill Co., 2d Ed. 1971. Pp. xlvi, 593. \$35.00.

As the editors stated in the preface to the first edition of this volume, when one negotiates for licensing agreements with another country, it is imperative to have a lawyer from the other country on the negotiating team. But often

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