

Book Review

Alexander W. Sierck

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Book Review

Anti-Dumping Law in a Liberal Trade Order, by Richard Dale. New York, St. Martin's Press, 1981, 237 pp., \$22.50.

Under the sponsorship of the Trade Policy Research Centre in London, Richard Dale, a lecturer in finance at the University of Bath in England, has written a lucid and concise analysis of the origins and application of antidumping law. He summarizes the law and policy not only of the United States, but of Canada and the European Community as well. He then compares these laws with the multilateral antidumping accord reached under the aegis of the General Agreement on Tariffs and Trade (GATT).

Dale's work should be a worthy addition to the libraries of all lawyers and economists concerned with international trade matters. Indeed, the U.S. trade case litigator, as well as government official, will find it an invaluable reference work, covering, for example, the treatment under the various antidumping laws of below cost sales and centrally planned economies, as well as summarizing many of the most significant injury determinations in the last two decades.

It is a central thesis of Dale's study that national and international antidumping laws lack solid intellectual foundations and are generally in direct conflict with the precepts of welfare economics. In particular, he stresses that price discrimination can be procompetitive, particularly where there are collusive arrangements in the importing country's domestic market or where a situation of apparent natural monopoly prevails. Further, Dale properly observes that dumping of raw materials or intermediate goods must necessarily benefit producers in the importing country at the expense of their competitors throughout the world.

As a result of these considerations, Dale asserts that antidumping laws should be repealed, but, somewhat off-handedly, does acknowledge the political difficulties in doing so. In this context he refers simply to the redistributive effects of low-priced imports without also specifying the social and political costs that such effects can have, particularly in a labor-intensive industry. Had Dale discussed these latter effects in greater detail, the legislator, to say nothing of the reader of this book, would have been in a better position to evaluate the worth of current antidumping policies.

Unwisely, Dale does not suggest that repeal of antidumping laws be conditioned on obtaining freer access to the markets of those nations whose exporters are most frequently accused of dumping. Moreover, Dale does not discuss the economic and political implications of what may be the evolving merger of concerns relating to dumping with those of government subsidiza-

tion. For example, since the late 1970s the focus of complaints on European steel imports to the United States is not that they are dumped as such but that they are sold below cost of production as a result of pervasive government subsidization, which is a form of dumping only recently recognized under GATT and national laws.

By way of background Dale correctly demonstrates that the political origins of antidumping laws lie in allegations of predatory behavior. He also correctly notes that the same obtains for domestic price discrimination laws, *e.g.*, the U.S. Robinson-Patman Act.

Dale likewise correctly demonstrates that the predatory pricing is rare, simply because it can seldom represent rational commercial behavior, *viz.* there is no guarantee that a predatory pricing strategy can secure a monopoly position for a period sufficient to compensate for the losses incurred while pricing below marginal cost. Among other things there is little certainty that, after a firm has achieved a giant market share through predatory pricing, the firm can keep potential foreign or domestic competition at bay, can prevent upstream vertical integration by customers, or can prevent government intervention in the market, any of which would impair the new monopolists' ability to change supra-normal profits. As a result, Dale concludes that the concerns of legislators dealing with perceived predatory dumping have been largely quixotic.

Dale then argues that the application of laws against dumping is, however, more than an irrelevance. Antidumping provisions have, in their implementation, become an impediment to international trade and a consequent threat to the liberal trade order because they are used to curtail competition in closed national markets. Dale should, however, have stressed that the antidumping laws are but one of a plethora of such non-tariff barriers, only some of which were covered in the Tokyo Round of Multilateral Trade Negotiations (MTN).

Further, because the antidumping laws and opinions are so vague, Dale concludes that they provide little guidance as to what future conduct is lawful. To the government official administering such laws, much less to the private practitioner, this comment seems indisputable. Thus, in Dale's view, the deterrent effect of the antidumping laws operates inefficiently.

Dale does acknowledge that a case can be made for the antidumping laws. First, there is a "felt need" for such laws related to popular concerns of fairness; here is where Dale could and should have stressed the government subsidy point. Second, antidumping actions provide a political safety valve; here Dale could and should have discussed further the economic and human costs resulting from a major market penetration by dumped imports, as well as by basic shifts in comparative advantage. Unfortunately, the costs of such

competition, fair or unfair, are rarely borne equally throughout the importing nation.

Dale observes that antidumping laws persist in part because producer interests in the importing country are likely to be better organized and therefore politically more effective than consumer interests. Presumably Dale must concede that if major change in world attitudes toward dumping are to occur, this balance of political power must change. But he offers no suggestions on how such change could be accomplished.

Recognizing the need for some medium for curtailing rapid import penetration, Dale argues that national action taken under the justification of a reformed GATT Article XIX, the escape clause provision, is to be preferred as a safety valve. As a safety valve, however, the escape clause may well, at least in the U.S., be perceived as an inadequate replacement.

The U.S. escape clause law does permit the imposition of global quotas as well as tariffs, and even "voluntary" quotas against individual nations, but it provides only five plus a possible additional three years of relief. In theory, the escape clause only gives domestic producers a few years to adjust to increased imports; it contains no mechanism to halt, for example, government subsidies. More importantly, U.S. escape clause law has a significantly higher injury and causality standard than does U.S. antidumping law. Indeed, as the ITC's November 1980 determination on the automobile escape clause case suggests, some U.S. industries may perceive difficulties in obtaining an ITC determination that increased imports were the single most important cause of injury at a time when they are encountering a cyclical downturn in domestic demand.

All that having been said, Dale's book is clear, stimulating and useful, as perhaps befits the author's background as a lawyer, investment banker and academician. His chapter on the recent history of the application of antidumping laws to the world steel industry, for example, is a masterful introduction to the political and economic problems of regulation of competition, fair and unfair, in an essential industry. For these reasons, and more, the book should be an essential and handy reference work for the international trade lawyer practicing in North America or Europe.

*Alexander W. Sierck**

* Partner, Beveridge & Diamond, Washington, D.C.; formerly Director of Trade Policy, Antitrust Division, U.S. Department of Justice, 1978-80; BA, LLB, University of Virginia.