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The World Trading System: Law and Policy of International Economic Relations

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BOOK REVIEW

The World Trading System: Law and Policy of International Economic Relations. John H. Jackson. Cambridge: The MIT Press, 1989. 417 pp.; \$45.00, cloth.

by **Lori Fisler Damrosch**

This book serves an important need by providing a clear overview of an increasingly complex subject. The author, a leading figure in international trade law, has distilled his accumulated wisdom into an accessible account of the major features of the world trading system. His intended audience includes not only lawyers, but political scientists, economists, government officials and others as well. While he acknowledges that his own "comparative advantage" is in the legal aspects of the field (p. 6), he places the legal concepts in their political and economic context to write a treatment that will be enlightening to readers from many different fields.

Jackson's classic work of 20 years ago, *World Trade and the Law of GATT*,¹ remains an indispensable resource for every lawyer concerned with international trade. His casebook, *Legal Problems of International Economic Relations*, now in its second edition,² is widely used in law schools and follows the "cases, materials and text" method so familiar to law students. *The World Trading System* is of a different genre from his previous books. It can easily be read by interested persons with no background in law and no need for detailed documentation or reference notes. Yet for those who do crave a deeper understanding of the material discussed, Jackson provides ample cross-referencing to his own prior work and that of other specialists.³ For those who are already regular users of his earlier books, this one should be added to the reference shelf, both because it brings previous treatments up to date and because, in various respects, it goes beyond them, especially in elaborating the author's policy recommendations. In contrast to *Legal Problems of International Economic Relations*, however, the book under review is

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1. *World Trade and the Law of GATT* (Indianapolis: Bobbs-Merrill, 1969)
 2. John H. Jackson and William Davey, *Legal Problems of International Economic Relations* 2d ed. (St. Paul: West, 1986).
 3. In addition to the works previously cited, the author frequently refers the reader to John H. Jackson, Jean-Victor Louis, and Mitsuo Matsushita, *Implementing the Tokyo Round* (Ann Arbor: University of Michigan Press, 1984), and to his numerous articles on diverse subjects.

limited in focus to issues of trade in goods: There is no more than passing reference to trade in services, monetary matters, investment or other such issues. The reason for concentrating on trade in goods is that, by virtue of the General Agreement on Tariffs and Trade (GATT) and substantial bodies of domestic law interacting with the GATT, the law governing trade in goods is the most fully developed of any system of rules concerning international economic relations. That body of law thus serves as a case study which could influence the law governing other economic activities (pp. 7, 21).

In this memorial issue dealing with the current state of international relations theory, it would be an exaggeration to claim that Jackson's book devotes much attention to pure theory. Rather, the focus is on trade *policy*, and especially the interaction between law and policy. While theoretical concerns are not ignored, the author instead emphasizes the many influences on the real world of trade policy, including the ways in which noneconomic considerations shape economic policies. Thus he frequently points out ways in which the world trading system has arrived at compromises that would hardly satisfy those who insist on some "pure" version of economic theory. The integration of theory and reality is one of the challenges of this memorial issue, and certainly one to which William T.R. Fox made major contributions.

Political scientists and economists may be impatient with the early chapters of Jackson's book because he discusses political and economic concepts at a high level of generality while providing a relatively detailed analysis of legal and institutional concepts. Yet for the lawyer, especially the nonspecialist, these introductory chapters are precisely what is needed: an examination of some of the competing concepts underlying the legal structures, coupled with a careful explanation of the "constitutional structure" of the world trade system in both its international and domestic aspects. Of most interest to non-legal readers in these chapters will be the discussions of the dilemma of rule versus discretion and of the evolution of the system from a power-oriented to a rule-oriented approach (pp. 24-25, 85-88, and chapter 4 generally). Jackson asks: Why do we have rules? When might it be justifiable to breach rules that are formally valid? What purposes does a dispute-settlement structure serve, beyond deciding who is right and who is wrong in a particular case? On the plane of international relations theory, Jackson's work raises important questions about the role of international law in affecting the behavior of states, persons and enterprises. The insights he offers should interest political scientists as well as lawyers and may help dispel some of the skepticism of political "theorists" as well as "realists" about the utility of law in influencing international relations.

Legal and nonlegal readers alike can benefit from Jackson's treatment of a series of key functional problems in the world trading system. The chapters on these points combine an exposition of where things stand today with recommendations on what should be done to address some of the thornier policy dilemmas. Among the most interesting are the chapters on safeguards and adjustment policies, subsidies, and nonmarket economies.

The chapter on safeguards and adjustment policies deals with the problem of imposing restraints on imports that are thought to be causing injury in an importing country. In contrast to measures taken in response to dumping or subsidies, safeguards are meant to alleviate adjustment burdens and are imposed against trade that is "fair" as opposed to "unfair." As much as any other area, this chapter illustrates the tension between the theory of free trade on the one hand, and the competing policies that nation-states and the international system must accommodate on the other. Jackson acknowledges that the GATT rules on safeguards are weak to the point of being ineffective, and that efforts to reform them have so far not borne fruit. In a few succinct pages (pp. 184-87), Jackson sketches out some suggestions to enhance international discipline over safeguards, with particular attention to some of the institutional features that might make a future agreement easier to achieve and more likely to be implemented.

Similarly, in the chapter on subsidies, Jackson explores the controversies that have made it so hard to achieve effective regulation of governmental support for export-oriented industries, and of measures taken by importing states in response to such support. GATT rules allow importing states to levy "countervailing duties" against certain kinds of subsidized imports, but these levies are often nothing but protectionism in very thin disguise. The concepts developed in this chapter underscore a theme running throughout the book: the difficulties that the international system faces in formulating rules acceptable to countries of differing economic, political, and social philosophies. The chapter discussed below on nonmarket economy countries is a further illustration of this theme. In full recognition of how formidable these difficulties are, Jackson outlines a series of steps for consideration by policy makers in an effort to strengthen the international rules on subsidies and countervailing duties. Here (p. 272) as elsewhere (especially pp. 275-81) he mentions the special needs of developing countries, some of whose subsidies practices may be justified where comparable practices undertaken by industrialized countries would not.

The chapter on nonmarket economies highlights a series of problems involving the interaction of economies based on the free-market prin-

principles for which the GATT rules were designed, and those based on radically different principles. Despite the headlong plunge of various countries from nonmarket toward market orientations, major nonmarket economies are likely to be with us for many years to come. China and the Soviet Union both aspire to closer relations with GATT;⁴ some half-dozen of the countries that have traditionally been considered non-market are GATT contracting parties already;⁵ and the remaining non-market countries, to greater or lesser degrees, have come to appreciate the considerable advantages of closer integration with the world trading system. Even the speediest of economic reforms in these countries will not completely eliminate the problems of integration, which will persist for as long as substantial sectors of their domestic economies remain state-dominated. China and the Soviet Union pose special concerns for the GATT system because of the size of their economies, their potential impact on the economic interests of the present GATT members and the possibility that in the absence of market-responsive pricing they could evade many aspects of GATT discipline. Jackson's philosophy is that GATT should not permanently exclude any trading nation; both for political and economic reasons it should be a universal institution (p. 290). Toward this end he suggests the development of "buffering mechanisms," such as those that might enable an injured importing nation to apply selective safeguards (import restraints) against imports from nonmarket trading countries, under different procedures and standards from those that would ordinarily apply under the GATT. His proposal is crafted in such a way as to allow the possibility that, in an economy in transition from nonmarket to market orientation, the special regime would apply only to sectors remaining under state domination (pp. 290-92). In a time when concerned policy makers are searching for ways to cope with and encourage rapid changes in economies that have until recently been largely state-controlled, proposals of this kind are worthy of serious consideration.

A rare disappointment is Jackson's treatment of the relationship between trade and environmental issues. In contrast to other chapters, where his brevity can be equated with elegance, here Jackson simply stops too soon. A brief section entitled "Pollution and Regulation of the

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4. For contrasting perspectives on the issue, compare Li, "Resumption of China's GATT Membership," *Journal of World Trade Law* 21, p. 25 (August 1987), with Herzstein, "China and the GATT: Legal and Policy Issues Raised by China's Participation in the GATT," *Law and Policy in International Business*, 18, p. 371 (1986).
 5. Czechoslovakia and Cuba both became contracting parties before changing from market to nonmarket orientation. Hungary, Poland, Romania and Yugoslavia joined the GATT by means of protocols of accession on terms negotiated with the GATT contracting parties. For a summary of the terms of accession, see Jackson, p.287.

Manufacturing Process (pp. 208-210) explores the problem of the impact on trade of differing regulatory schemes for protection of health, safety and the environment. Goods from countries that are lax about such regulation can be priced more cheaply and can thereby undercut goods produced in countries with relatively stringent controls; yet measures that importing states might take in an effort to keep such goods out or to equalize the regulatory burden on them may run afoul of GATT's nondiscrimination and national treatment requirements. The issue is as yet unresolved within GATT. Rather than providing the types of reflective proposals that characterize most of the other chapters, Jackson closes the section with these words:

Perhaps the best approach is at least temporary "benign neglect," with the possibility that over time many of these problems will sort themselves out as the necessity of health and safety regulations becomes more apparent to more nations. (p. 210)

An accompanying note merely alludes to the possibility that the United Nations Environmental Program "might play a role in international regulation or harmonization of pollution controls" (p. 374, n. 29), without any mention of possible multilateral approaches to the problem of *trade effects* of disparate national regulatory schemes. It is hard to see how neglect could be "benign" when under the existing system producing countries can export environmental injury along with goods and can sacrifice worker safety and environmental protection at home in order to gain an advantage in export trade. The suggestion that these problems might solve themselves is not up to Jackson's usual standard.

Jackson candidly states, "There is no doubt in my mind that the reader will find certain aspects of this book frustrating" (p. ix), and this reviewer would not disagree with that prediction. But the book succeeds extraordinarily well at what it sets out to accomplish. Because of its emphasis on exploring fundamental concepts, it will serve its diverse audiences well for many years to come.