

BOOK REVIEW

THE GATT—LAW AND INTERNATIONAL ECONOMIC ORGANIZATION. BY KENNETH DAM. Chicago: The University of Chicago Press, 1970. Pp. xvii, 480. \$15.00.

Joel M. Fisher †

Warren E. Hewitt ††

Prime attention was focused on international trade in the post-World War II surge of proposals for international organizations designed to cope more effectively with world problems and thereby make another world conflict less likely. Because the economic dislocations attributable to trade restrictions had been considered one of the underlying causes of the second world war, attention in the late 1940's focused on the creation of an organization to promote freer world trade. The failure then to ratify the Havana Charter and the consequent stillbirth of the International Trade Organization promoted the sleight of hand which led to the form and functioning of GATT.¹

The General Agreement on Tariffs and Trade, a highly complicated set of interlocking articles, was concluded among many of the leading trading nations in 1947. This agreement was aimed at substantially reducing tariff barriers to trade as well as eliminating discriminatory treatment in international commerce. Intended to be temporary, the General Agreement has endured, and out of its articles a living and lively international organization has gradually emerged.

As an organization, GATT has essentially no constitutional underpinning. This basic fact sets GATT apart from its companion international organizations both in the United Nations system and outside

† Associate Professor of Political Science, California State College, Fullerton. LL.B. 1961, M.A. 1962, University of California; Ph.D. 1968, Claremont Graduate School-University Center. Dr. Fisher, on leave of absence from California State College, has been serving on the White House and State Department staffs as an assistant for policy studies.

†† Chief of the Human Rights Division, Department of State. A.B. 1943, Ursinus College; LL.B., M.I.A. 1950, Columbia University.

The views expressed are solely those of the authors and are not meant to represent the positions of either the White House or the State Department.

¹ Since both the institution and the underlying legal document bear the name of the General Agreement on Tariffs and Trade, Professor Dam's convention of referring to the institution as the "GATT" and the legal document as the "General Agreement" will be followed. K. DAM, THE GATT—LAW AND INTERNATIONAL ECONOMIC ORGANIZATION 3 n.1 (1970).

it. Consequently a study of GATT will greatly profit those whose interests center on international organizations, as well as anyone who seeks to understand the art of international cooperation and the means by which the international community can best be organized for the future.²

Professor Dam has composed a comprehensive analysis and commentary on GATT, on the articles themselves and their intricate interrelationships, and on the organization which has grown up to serve the parties to the General Agreement. He presents in ample detail a description of the GATT tariff system and technical arrangements, and their interrelationships. A great deal of the book consists, in effect, of an article-by-article analysis of the General Agreement and carries the reader into the highly technical details of tariff and non-tariff barriers. Demanding more than passing familiarity with the GATT articles, the book is not light reading. The narrative, to be meaningful, frequently requires reference to the text of the General Agreement. On the whole, the range of problems raised by the GATT articles and discussed by Professor Dam are reasonably intelligible to the non-expert reader, but at a few points the discussion strays far into the intricacies of the language and theoretical problems which only the GATT expert could create. These theoretical postulations may stimulate law students, but in general they unnecessarily distract and impede the comprehension of the reader unversed in this subject. For example, discussion of the highly technical question of border tax adjustments³ drifts into a discussion of such a complicated maze of possibilities and variant solutions as to dismay any but the most committed student of the problem. It would perhaps have been preferable for the author to make greater use of actual cases drawn from the rich history of GATT, as graphic and more interesting illustrations of his conclusions about the General Agreement.

Considering social science literature as it continues to change in this decade, one notes with interest a principal theme running through the author's presentation: that GATT has shied away from legalism in favor of a pragmatic approach. Professor Dam appears to attribute significant positive value to this approach, and suggests the success claimed by GATT derives from the willingness of the secretariat and the contracting parties to overlook violations of the letter of the law in favor of a search for practical solutions.⁴ He finds notable that treaty enforcement is not regarded in GATT circles as an important

² The authors of this review hasten to add, at the outset, that their main interests and experience have been in international law and international organizations, not GATT per se.

³ K. DAM, *supra* note 1, at 210-21.

⁴ See *id.* 4, 339-40.

function.⁵ He also implies approval of the pragmatic antilegalistic style of the secretariat and advances as the underlying principle that GATT is essentially designed to preserve a balance of concessions and obligations.⁶ This is a key judgment on the part of the author, which he supports with numerous historical instances in which the letter of the law of GATT has been ignored in the interest of finding solutions.

One is left, however, with the uneasy feeling that such laudable efforts to make GATT work through a recognition of realities in overcoming obstacles may have been carried to an extreme. In a number of the instances described in the book, the practical solution apparently was also the easiest solution, in which obligations undertaken by parties were relaxed and serious disputes avoided. One may conjecture that greater pressures on the governments to adhere to the legal undertakings set forth in the GATT articles would have better fulfilled the goals of GATT.

The non-specialist in GATT affairs will be particularly interested in the success of GATT as an international organization and the portents for its future. In highly erudite and competent fashion, Professor Dam portrays the functioning of GATT under the leadership of its seemingly indispensable Director-General, Eric Wyndham White, from the crucial formative years to White's retirement in 1968. In his analysis of GATT's unique pragmatism Professor Dam spells out the multilateral character of the organization. He suggests, or leads one to believe, that although GATT does work the functioning may be an anomaly. In the most pragmatic sense, however, there is no organization to administer the GATT; it administers itself with a secretariat in Geneva.

The book is much less sure and helpful in its prognostications. Professor Dam recognizes the competitive threat which has most recently arisen in the form of the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD).⁷ He assumes that GATT will continue as the third and equal member of a triumvirate. Professor Dam's discussion of GATT's current role leaves the distinct impression, however, that GATT may be losing out to its two rivals. One wonders whether the GATT's *raison d'être* can maintain it as an effective international force. Professor Dam points out that a future problem area is the proliferation of discriminatory trading agreements between developed countries and one or several less developed nations. As he cogently suggests, preferential arrangements of this kind strike against GATT's firm policy of "most-favored-nation" treatment and could, if

⁵ See *id.* 351-76.

⁶ See *id.* 78-81.

⁷ See *id.* 377.

unchecked, threaten a return to the jungle of discriminatory bilateral practices.⁸ The reviewers agree that the net result of this would be a decrease in world trade and possible international or regional political tensions.

Scattered through the book are a number of suggestions for enhancing and strengthening the role of the GATT secretariat in the future. To the detriment of the author's argument, these suggestions are presented as incidentals to discussions of the various tasks which GATT performs under its articles. Nowhere do his suggestions appear as a coordinated set of proposals for remodeling the organization in a way which will enable it to cope with the challenges presented by the creation of competing organizations. At one point, for example, Professor Dam suggests that GATT could do more with the information it collects than simply review and summarize it for redistribution.⁹ At another point he suggests that GATT should be dealing more directly—not just coping—with the matter of quantitative restrictions.¹⁰ Later he also calls for more detailed work under GATT's auspices on the problem of administrative barriers to trade.¹¹ Basically he concludes that the GATT is no longer merely a trade agreement administered passively by an embryo secretariat, but has become de facto an international organization actively pursuing certain affirmative goals. This conclusion does not seem so certain. In fact, while he may not intend to do so, Professor Dam leaves the very strong impression that the future of GATT has become decidedly unclear.

Based on his legal expertise and long and intimate exposure to GATT, Professor Dam presents a professional, learned, and well-rounded discussion of the GATT structure and those problems inherent in its articles. From his book, the reader can derive a good understanding of the manner in which the contracting parties and the secretariat dealt with these problems until 1968. The new forces loose, as embodied in UNCTAD and OECD, are usefully described and explained. The book unfortunately fails to assess the potential impact of the retirement of its skillful and prestigious first Director-General, and gives only uncertain indicators of the future role which GATT can play in a milieu now quite different from that when it was launched.

It is difficult to put aside this book with any conviction that the future lies secure for GATT. Moreover, one is disappointed that Kenneth Dam, who displays such a remarkable knowledge of the

⁸ See, e.g., *id.* 18-19, 62-63.

⁹ See *id.* 375.

¹⁰ See *id.* 163-65.

¹¹ See *id.* 180-98.

intricacies of the functioning of GATT, failed to give more attention to the ways in which GATT might be reformed or strengthened to deal more effectively with the new problems which so certainly await the trading nations of the world.